

CLERK'S COPY.

149  
Vol. II

595980  
Sup. Ct.

**TRANSCRIPT OF RECORD**

---

---

**Supreme Court of the United States**

**OCTOBER TERM, 1943**

**No. 28**

---

**THE BROTHERHOOD OF RAILROAD TRAINMEN,  
ENTERPRISE LODGE No. 27, ET AL., PETI-  
TIONERS,**

**vs.**

**TOLEDO, PEORIA & WESTERN RAILROAD**

---

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SEVENTH CIRCUIT**

---

---

**PETITION FOR CERTIORARI FILED MARCH 22, 1943.**

**CERTIORARI GRANTED APRIL 19, 1943.**

74  
VOLUME 51  
IN THE  
**Supreme Court of the United States**

October Term, A. D. 1941.

No. \_\_\_\_\_

**THE BROTHERHOOD OF RAILROAD TRAINMEN,  
ENTERPRISE LODGE NO. 27, et al.,**

*Petitioners,*

vs.

**TOLEDO, PEORIA & WESTERN RAILROAD,**

*Respondent.*

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SEVENTH CIRCUIT.



IN THE  
**Supreme Court of the United States**

OCTOBER TERM, A. D. 1942.

\_\_\_\_\_  
No.  
\_\_\_\_\_

THE BROTHERHOOD OF RAILROAD TRAINMEN,  
ENTERPRISE LODGE NO. 27, ET AL.,  
*Petitioners,*

*vs.*

TOLEDO, PEORIA & WESTERN RAILROAD,  
*Respondent.*

\_\_\_\_\_  
ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SEVENTH CIRCUIT.  
\_\_\_\_\_

## **INDEX.**

---

Index to printed record of proceedings in U. S. District Court .....	i
Clerk's certificate to volume I of printed record of proceedings in U. S. District Court .....	520a
Clerk's certificate to volume II of printed record of proceedings in U. S. District Court .....	1017
Index to proceedings in U. S. Circuit Court of Appeals:	
Placita .....	1019
Opinion by Lindley, J., filed Dec. 16, 1942 .....	1020
Dissent by Minton, J. ....	1032
Judgment affirming, entered Dec. 16, 1942 .....	1038
Order of Jan. 15, 1943, denying petition for a rehearing .....	1039
Praeceptum for record, filed Jan. 23, 1943 .....	1040
Designation of additional portions of record, filed Jan. 26, 1943 .....	1041
Clerk's certificate .....	1043
Order allowing certiorari .....	1044

**United States Court of Appeals  
for the Southern District of Illinois**

**No. 7951**

**TOLSON, PEORIA & WESTERN RAILROAD,**

*Plaintiff-Appellee,*

**THE BROTHERHOOD OF RAILROAD TRAINMEN,  
ENTERPRISE LODGE NO. 27, ET AL.**

*Defendants-Appellants.*

U.S.C.A.-7  
FILED

JUL 3-1942

KENNETH J. GARRISON  
CLERK

Appeal from the District Court of the United States for  
the Southern District of Illinois, Northern Division.

TRANSCRIPT OF RECORD FILED MARCH 6, 1942.  
DOCKETED MARCH 6, 1942.  
PRINTED RECORD.



**In the  
United States Circuit Court of Appeals  
For the Seventh Circuit**

---

**No. 7951**

---

**TOLEDO, PEORIA & WESTERN RAILROAD,**  
*Plaintiff-Appellee,*

*vs.*

**THE BROTHERHOOD OF RAILROAD TRAINMEN,  
ENTERPRISE LODGE NO. 27, ET AL.,**  
*Defendants-Appellants.*

---

**Appeal from the District Court of the United States for  
the Southern District of Illinois, Northern Division.**

## INDEX.

Placita .....	1
Complaint, filed Jan. 3, 1942.....	2
Exhibit A—Letter Nov. 21, 1941, Cole to Best, et al., Letter Nov. 8, 1941, Coyle to Cole.....	34
Exhibit B—Letter Nov. 21, 1941, Cole to Best, et al., Letter Nov. 8, 1941, Keiser to Cole.....	36
Exhibit C—Statement of Zeno F. Merrill.....	38
Exhibit D—Statement of Harold E. Kipling.....	40
Findings of Fact on application for temporary re- straining order, filed Jan. 3, 1942.....	43
Temporary restraining order, entered Jan. 3, 1942....	50
Bond for costs, etc., filed Jan. 3, 1942.....	61
Order as to service of application for temporary in- junction, entered Jan. 5, 1942.....	64
Certificate of mailing, etc. ....	65
Order extending and continuing in force temporary restraining order, entered Jan. 8, 1942.....	66

## TRANSCRIPT OF PROCEEDINGS.

Colloquy .....	68, 753, 952, 957
----------------	-------------------

### PLAINTIFF'S WITNESSES.

Testimony of:	
Albee, Clara .....	709
Ashburn, R. T. ....	356
Ashcraft, Joseph F. ....	305
Avery, Raymond Paul .....	632
Barbee, James W. ....	584
Best, H. H. ....	756
Burbage, Steve .....	712
Burkhalter, J. W. ....	763

Callender, Robert .....	323
Carnarius, Clarence L. ....	189
Compton, Walter .....	339
Cook, Roy .....	535
Coyle, Frank W. ....	71
Doran, Lloyd T. ....	355
Douglas, Lindel .....	370
DuBois, Don .....	293, 305
Funk, E. R. ....	443
Genda, Charles .....	687
Glavash, Boris J. ....	263
Grafelman, William .....	620
Green, R. E. ....	671
Gulick, Omar C. ....	462
Hanley, George .....	386
Hanson, Olaf .....	666
Hardy, Wilson H. ....	335
Harris, Kenneth L. ....	627
Harvey, Clarence .....	257
Heilman, J. H. ....	317, 602
Hinterliter, Sherman .....	557
Hultgren, I. H. ....	211
Hunter, William J. ....	548, 675
James, Carl .....	501
Johnson, William O. ....	574
Kane, Harold .....	521
Keiser, W. C. ....	77
Kipling, Harold E. ....	408, 460, 531, 706
Kronblad, Gerald R. ....	673
Lantz, James .....	651
Lawson, Ernest Alfred .....	240
Lucas, Frank W. ....	393
Marts, Earl .....	595
Meents, Lester V. ....	562



Merrill, Zeno .....	81
Mutchler, Frank .....	692
McAvoy, Lloyd E. ....	488
McKinney, R. F. ....	148
McLain, J. P. ....	639
McNear, George P., Jr. ....	720, 760
Newdigate, Anna .....	304
Owen, Edmund P. ....	171
Owen, Philip .....	635
Payne, Carroll .....	269
Pearson, Clayton .....	655
Reeves, Frances .....	606
Riley, Catherine .....	483
Riley, Earl .....	477
Rinck, Adolph .....	614
Ruddell, Leland .....	511
Seth, Charles .....	569
Shepler, Norman H. ....	604, 612
Silcox, Roy .....	657
Slater, Elmer L. ....	683
Snyder, Elward F. ....	580
Sprague, Robert G. ....	769
Sternberg, Ernest M. ....	703
Stonebock, August E. ....	380
Sullivan, Arthur R. ....	661
Sund, Carl W. ....	648
Sweet, John H. ....	137
Taylor, Bert .....	361
Taylor, Richard .....	127
Thielbert, Fred .....	281
Thompson, Herschel .....	104
Trowbridge, Roy .....	704
Tucker, Edgar .....	166
Umshler, John L. ....	589

Walker, W. A. ....	348
Ward, Larry ....	218
Ware, Wallace Y. ....	696
Widmer, Harley ....	325
Widmer, Robert C. ....	330
Wolf, John ....	678

#### DEPENDANT'S WITNESSES.

##### Testimony of:

Brewster, Arthur ....	907
Brown, Clarence L. ....	929
Causey, W. E. ....	922
Cole, H. E. ....	837
Coyle, Frank W. ....	948
Dilley, Harold James ....	821
Gabbert, Blanche ....	875
Gabbert, Clarence S. ....	817
Harkless, Sheldon M. ....	919
Johnson, Loren Vern ....	849
Keiser, W. C. ....	943
Kirk, C. H. ....	861
Kirk, Oliver W. ....	857
Kirk, Verd ....	796
Kohtz, Walter F. ....	888
Lucas, Frank M. ....	839
McMullen, Walter ....	865
Newdigate, Delmar G. ....	933
Oyeracker, A. R. ....	855
Roskamp, Carl ....	898
Siebenthal, Herman ....	794
Stetler, Clinton ....	862
Todd, H. O. ....	805
Totten, Leo C. ....	876
Wilson, Hustler ....	901

Statement by the Court.....	954
Amendment to Complaint, filed Jan. 15, 1942.....	958
Motion to vacate order of Jan. 8, 1942, extending restraining order, etc., filed Jan. 15, 1942.....	960
Order denying motion to vacate, etc., entered Jan. 15, 1942 .....	962
Amendment to complaint, filed Jan. 15, 1942.....	963
Order extending and continuing in force temporary restraining order, entered Jan. 16, 1942.....	965
Motion to vacate orders, etc., filed Jan. 19, 1942.....	966
Order denying motion to vacate orders, etc., entered Jan. 19, 1942.....	968
Findings of Fact, filed Jan. 19, 1942.....	970
Order for temporary injunction, entered Jan. 19, 1942	977
Supersedeas Bond, filed Jan. 19, 1942.....	983
Rule to Show Cause, entered Feb. 2, 1942.....	985
Order directing U. S. Marshal to enforce temporary injunction, entered Feb. 9, 1942.....	986
Rule to Show Cause, entered Feb. 9, 1942.....	987
Order on motion for Default, etc., entered Feb. 9, 1942	989
Order re Answer, etc., entered Feb. 10, 1942.....	990
Answer to Amended Complaint, filed Feb. 16, 1942....	991
Order re Cash Bond, entered Feb. 17, 1942.....	999
Notice of Appeal, filed Feb. 17, 1942.....	1000
Order continuing hearing on motion, etc., entered Feb. 24, 1942 .....	1002
Statement of Points .....	1002
Motion to extend time to file Transcript of Record....	1007
Order extending time to file Transcript of Record....	1008
Designation for Short Record.....	1009
Designation of Record.....	1010
Petition re Exhibits.....	1012
Order re Exhibits .....	1013
Additional Designation of Record.....	1014
Clerk's Certificates .....	1015



746

January 13, 1942.

Trial Resumed at 9:30 o'clock A. M.

Appearances: Same as before.

HAROLD KANE, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Harold Kane.

Q. Where do you live?

A. Bushnell, Illinois.

Q. What's your age?

A. Thirty-six.

Q. And what is your business or occupation?

A. Right now?

Q. Well, what has it been?

A. I have been working as a carpenter.

Q. What is it now?

A. A guard for the T. P. & W. Railroad Company.

Q. When were you employed?

A. Oh, a little over two weeks ago, I think.

Q. And who employed you?

A. Johnny Kipling.

Q. And what branch of the road were you assigned  
747 to? What trains did you ride?

A. I rode the trains going west.

Q. And were you on the train on January 2, 1942, that left Peoria in the morning and had some trouble near the Allied Mills?

A. Yes, sir.

Q. And where were you riding on that train?

A. I was riding on the engine.

Q. Whereabouts on the engine?

A. In the cab.

Q. And did you observe any difficulty that train had west, or southwest, of the Allied Mills?

A. Yes, I did.

Q. What was it?

A. Well, a lot of bricks and rocks were thrown at us.

Q. Was there anything that happened before you reached that point?

A. Oh, there had been a few bricks and rocks thrown.

Q. Where were you in the cab?

A. I was standing behind the engineer.

Q. What were you doing at the time this occurred south of the Mills crossing?

A. I was just dodging bricks and things.

Q. Now, were you armed that day?

A. Yes, sir.

Q. Did you shoot?

A. No, sir.

Q. Did you display the weapon that you had?

A. No, sir.

Q. Did Mr. Kipling give you any instructions, when you were employed, with reference to the use of your firearm?

748 A. He said not to pull a gun unless you were personally attacked.

Q. Did you obey that direction?

A. I did.

Q. Did you at any time that day attempt to use the weapon that you had?

A. I did not.

Q. Now, where were you with reference to the special agent, James? Were you near him on your engine?

A. Yes, I was.

Q. What happened to him, if you observed?

A. Well, there was a brick or rock thrown, and he had his hand on the back of the seat there, and that rock hit him on the back of the hand.

Q. Were you there when it happened?

A. I was.

Q. Did you see the rock hit him?

A. I saw the rock hit him.

Q. Following that, did you see his hand?

A. Yes, I saw his hand the following day.

Q. Did you observe anything besides rocks and stones thrown into the cab of that locomotive?

A. There was a bottle of some kind of inflammable fluid thrown in there.

Q. Did you see it come in?

A. Yes.

Q. Did you see the man that threw that?

A. Yes, I did.

Q. Can you pick him out in the court room?

A. Yes, I think so.

749 Q. Pick him out.

A. The second man back there in the third row of seats.

Mr. Heyl: Will you stand you, please, the second man in the third row? (Person named rises.)

Q. Is that the man?

A. No, the next row.

Q. That is the fourth row of seats. Is that the man?

A. That's the man.

Q. Mr. Lucas that's now standing up?

A. Yes.

Q. And where was he when he threw that bottle?

A. Well, he was standing up on an embankment there along the right-of-way.

Q. Was the embankment lower or higher than the track on which the locomotive was traveling?

A. It was higher.

Q. How did he throw that?

A. Well, he just threw it into the cab, and that's about all I saw, him throw it.

Q. Then what did he do?

A. I couldn't see him after.

Q. The engine moved on?

A. The engine moved on.

Q. What happened in the cab when that bottle of fluid struck?

A. It ignited, and there was a lot of fire in there.

Q. Did you help put the fire out?

A. Yes, I did.

Q. What did you do to put the fire out?

A. We tried to get the hose and put some water 750 on it, I guess, and the fireman threw coal on it.

Q. Did you observe the character of the bottle that was thrown?

A. It looked like a whiskey bottle.

Q. What size?

A. I would say a pint bottle.

Q. Now, did the rocks and bricks strike the engine before or after this explosion of the bottle?

A. Some of them struck it before, and some of them afterwards.



Q. Then what did the engineer do, if anything, with reference to the locomotive?

A. Well, he stopped the engine as quick as he could.

Q. Did you hear any shooting?

A. No, I never heard any shooting.

Q. Either from the engine or from the ground?

A. No, I never heard a shot fired.

Q. Was there a noise there in addition to the rocks?

A. There was a lot of noise there.

Q. Can you tell the court about the number of bricks and stones that were thrown at the train at this time?

A. I wouldn't have an idea, only it was a lot.

Q. Many or few?

A. There was a lot of them thrown.

Q. Do you recall when this train that we have just been talking about reached a point opposite the Star Union Distributing Company, or the Union Brewery, as it is commonly called, south of the Union Station in Peoria while you were still in Peoria?

A. Yes, I recall that.

Q. What happened there?

A. I think that was where Engineer Funk was hit with a stone.

751 Q. Did you see what it was that hit him?

A. It wasn't a rock or it wasn't a brick. It was a piece of cinder or something.

Q. Where was he when that was thrown?

A. He was in the engine cab.

Q. Did you see the man that threw that?

A. No, I didn't.

Q. Did you see any other men there along the track at that time?

A. Well, there was a lot of men along the track at that time.

Q. Can you recognize any of them?

A. Well, I don't know very many of them.

Q. Do you recognize them as being some of the defendants who are here in the court room?

A. Well, I wouldn't say that I could recognize any of them.

Q. What was the size of that article that you say hit Funk?

A. Oh, I would say it was about four or five inches in diameter.

- Q. Heavy or light?  
A. It was heavy.  
Q. What was the effect on him when he got hit with it?  
A. It kind of knocked him out for a little bit.  
Q. Did you see that in the cab afterward?  
A. Yes, he kept it.  
Q. In the cab?  
A. Yes.  
Q. You went on in that train on west, didn't you?  
A. Yes, sir.  
Q. What happened west of Hollis?  
A. Nothing happened from then on.  
752 Mr. Heyl: That's all.

*Cross-Examination by Mr. Knoblock.*

- Q. How long have you lived in Bushnell, Mr. Kane?  
A. Practically all my life.  
Q. And how long have you known Harold Kipling?  
A. Oh, fifteen or twenty years.  
Q. And did he come to you in Bushnell, and approach you for this guard work for the T. P. & W.?  
A. Well, I talked to him two or three months ago about a job, and he said the first chance he got he would give me a job.  
Q. And this was the occasion about two weeks ago you say you went to work there?  
A. Yes, sir.  
Q. Can you tell us exactly what day it was?  
A. It was two weeks ago yesterday. I don't know just what the date was, 29th or 28th.  
Q. That was December 29, 1941?  
A. I think it was the 29th.  
Q. And what was your rate of pay there?  
A. I don't know.  
Mr. Elliott: I object. That is immaterial.  
The Court: He said he didn't know.  
Q. Are you one of the men that receives a \$10.00 bonus over and above your regular rate of pay?  
A. No, sir.  
Q. How many guards were there of you riding on this train on this incident west of Hollis you are speaking about?  
A. I think there were eight.

753 Q. Eight guards on that train?

A. I think so.

Q. Now, what time did you leave the T. P. & W. yards that morning?

A. I don't know. I didn't keep track of the time.

Q. And were all eight of you up in that engine?

A. No.

Q. Where was the other four?

A. I think they were back in the caboose.

The Court: I can't hear this witness.

Mr. Heyl: I can't, either.

The Court: A great, big, healthy fellow like you ought to speak up loudly enough so these lawyers can hear you.

Q. When you left the T. P. & W. yards, there was nothing that happened at all until you got across the river, is that it?

A. That's right.

Q. Where was the first point that you noticed anything unusual?

A. I think down by that brewing company, that Star Brewing Company.

Q. Who was running the engine at that time?

A. I think Funk was running it at that time.

Q. Which side of the train did that rock come from?

A. From the right side of the train.

Q. You spoke of some men being out there along the right-of-way. They weren't very close at that point, were they?

A. They were right there on the crossing, on the road there.

Q. Were any of them within a hundred and fifty feet?

A. They were closer than that.

Q. Did you get a good look at those men?

A. No, I didn't get a very good look. We were moving along.

754 Q. You yourself didn't recognize anybody?

A. Not there, no.

Q. You don't know who threw that object at the train?

A. No, I don't.

Q. The fact of the matter is, you didn't even see it thrown, is that right?

A. That's right.

Q. Then, as you proceeded on south, when was the next time that you noticed anything unusual.

A. Right west of the Allied Mills.

Q. West of the Allied Mills there?

A. Yes.

Q. Did you do any switching there at the Allied Mills?

A. Yes, they set out some cars there, I think.

Q. Who, besides yourself, were special agents in that train on that occasion?

A. Well, James and Cook, and I don't know what the other fellow's name was.

Q. James and Cook.

A. And myself, and I don't know who the other fellow was.

Q. Where is Cook from?

A. I don't know.

Q. Had you ever worked for the T. P. & W. prior to this time?

A. No, sir.

Q. As you were switching there at the Allied Mills, were you the guard that got down off the train on the ground?

A. I was one of them that got out of the train.

Q. Are you one of the men that opened your coat and put your hand on your gun, and pulled it half way out of your holster?

755 A. No, sir, I never done that, or saw anybody else do it.

Q. At that time there was no threats? There was no show of violence at all there, was there?

A. Not from our side, no.

Q. How about the other side?

A. They was running along there with clubs in their hands, some of them.

Q. Did they get on your right-of-way?

A. No, sir.

Q. Did any of them actually throw anything at you?

A. Not right then, no.

Q. Some of your men were yelling, "Sucker"?

A. I never heard any.

Q. Did you see some of your men thumbing their noses at them?

A. No, sir, I did not.

Q. Along in there by the Allied Mills is where the engineer gave them the shot of steam?

A. I never saw him give them any shot of steam at all.



Q. You never say that at all?

A. No.

Q. Would you say that blow-off cock was never opened along that road?

A. Yes.

Q. Are you sure?

A. As far as I know, it wasn't opened.

Q. When you got south of the Allied Mills, about how far south was that from the Allied Mills, this incident that you speak of?

A. Oh, I would say it was between a half and a 756 quarter, a quarter and a half mile.

Q. Were all four of you special agents armed that day?

A. I think so.

Q. Who gave you the guns?

A. Mr. Kipling.

Q. Do you carry any deputy sheriff's commission from any county?

A. No, sir.

Q. You don't carry it from Peoria County here, either?

A. No, sir.

Q. Now, as you got down there a half to a quarter of a mile south of the Allied Mills, did you notice the engineer turn on the blow-off cock on that occasion?

A. I did not.

Q. Did you see the steam go up over these men standing on the bank there?

A. I did not.

Q. And the fact of the matter is, the steam hit them first before any rocks were thrown, isn't that right?

A. I never saw any steam.

Q. Now, you heard some shots there on that occasion, didn't you?

A. I did not.

Q. You never heard a shot come from the cab of that engine at all?

A. No, sir.

Q. You knew that a man by the name of Dilley was shot?

A. I heard about it, yes.

Q. But you didn't shoot him?

A. No, sir.

Q. You don't know who did?

A. I never heard any shots fired.

757 Q. There weren't any shots fired in the cab of the locomotive there, was there?

Mr. Heyl: I object. He said he didn't hear any.

Mr. Knoblock: All right.

The Court: I think he said that.

Q. How long did this shower of rocks there last at that place?

A. Oh, I would say about ten minutes.

Q. About ten minutes? And about how fast was your train moving along there?

A. Not very fast. They just started pulling out there.

Q. What is your best judgment with reference to the rate of speed?

A. Not over ten miles an hour.

Q. And how many feet did you travel along there while this shower of rocks was being thrown against your cab?

A. I couldn't tell you. I don't know.

Q. Do you have any judgment on that at all?

A. No, I wouldn't.

Q. Who was running the engine right in there?

A. Gulick was running the engine at that time.

Q. And just where was it that you saw this man Lucas that you pointed out here?

A. Well, he was up on the bank there along the right-of-way.

Q. And how did you happen to see him?

A. Well, I just seen him let loose of that bottle.

Q. Did you see any of the rest of them up there?

A. Yes, there was more around there.

Q. Who else can you identify that was there?

A. I can't identify any of them.

Q. How long had you known Lucas?

758 A. Since he was special agent; used to come through Bushnell a good deal.

Q. You have known him since those days?

A. I am not really acquainted with him.

Q. But you know who he is?

A. Yes.

Q. Now, you say you were standing right behind Engineer Gulick at that time, is that right?

A. That's right.

Q. Was James standing behind you, or over in the middle of the cab?

A. He had his arm behind me, his arm behind me resting on the seat.

Q. In other words, you were right behind Gulick, and James was behind you?

A. Yes.

Q. And there was two guards in there besides you two?

A. Yes.

Q. And there was Engineers Funk and Gulick, and who else?

A. The fireman.

Q. What was his name?

A. I don't know.

Q. And who else?

A. No one, I guess.

Q. No one else in there?

A. No one that I know of.

Q. Wasn't there a time out here at this Hollis situation where you special—I will withdraw that.

Q. You had a curtain on that cab that day, didn't you?

A. Yes, we did.

Q. And that was drawn, wasn't it? Closed?

759 A. Yes.

Q. And you special agents were standing back there by that curtain, weren't you, at one time?

A. Yes.

Q. And all of you were standing back there by the curtain?

A. I don't know whether all of us was or not.

Q. Who else besides you?

A. I couldn't tell you. I don't know.

Mr. Knoblock: That's all.

The Court: Call the next witness.

*Redirect Examination by Mr. Heyl.*

Q. Did you carry this gun when you were off the premises?

A. I did not.

Q. I mean on the company's premises. What did you do with the gun when you got through at night?

A. I left it in Mr. Kipling's office.

Q. Was that done by all the special agents?

A. I think so.

Q. As far as you know?

A. As far as I know.

Q. You had never carried this gun off of the premises of the T. P. & W.?

A. No.

Mr. Knoblock: Just a moment. One or two questions on cross examination I want to ask.

760 *Recross Examination by Mr. Knoblock.*

Q. Isn't it a fact, Mr. Kane, you were not in this engine cab at all, but you were the man that was up on the tender on top of the coal shooting directly at Dilley?

A. That's not true. I was not. I was in the cab of the engine all the time.

Mr. Knoblock: That is all.

761 Mr. Heyl: I am recalling Mr. Kipling for one question.

HAROLD E. KIPLING, recalled, having been previously sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. Your name, please.

A. Harold E. Kipling.

Mr. Knoblock: I want to say this: I have no objection if I am accorded the same privilege later on with some of my witnesses.

The Court: You have the right to recall on an important matter. We are not going to recall on everything.

Q. You are the same Harold E. Kipling who testified yesterday?

A. I am.

Q. I will ask you if you know what kind of guns and ammunition you furnished each of the special agents that have testified in this case?

A. Yes, sir. I furnished them 38 specials, with 38 special shells, lead and copper-coated on the outside.

Q. And where did you purchase those shells?

A. At Mr. Louis Koren's.

Q. Koren Company on South Adams Street?

A. Yes, sir.

Q. In the 500 block, or 400 block?

762 A. Yes, sir.

Q. Have you one of the shells with you?

A. Yes, sir (producing same).

Mr. Heyl: We would like to have this marked as an exhibit, Your Honor,—

The Court: It may be marked.

Mr. Heyl: —and offer it in evidence.

It is PLAINTIFF'S EXHIBIT 2, until she can mark it appropriately. We offer it in evidence.

Q. Is that one of the bullets or shells, rather, cartridges, furnished by you to each of the special agents?

A. Yes, sir.

Q. The same kind furnished to all?

A. No, there is one 32 special at Effner, Indiana. The fellow has got it in Effner, Indiana. That has a 32 cartridge, lead and copper-coated, too.

Q. The same character of load as this?

A. Yes, sir.

Q. And, outside of one that's at Effner, the others were all of the same type of load and the same type of shell and gun?

A. All of the men working out of Peoria, yes. There is some other kind of guns out on the road.

Q. But the ones working out of Peoria?

A. Yes.

Q. The special agents that were on this train January 2, 1942, carried the revolver that you have just described?

A. Yes, sir.

Q. Each and all of them?

A. Yes, sir.

763 Q. What instructions, if any, did you give these men, special agents, with reference to carrying the weapons off the premises?

A. Told them they were not to take their guns off the premises under any consideration.

Q. That was the instruction given to each?

A. Yes, sir.

Q. What did they do with reference to turning them in to you?

Mr. Knoblock: Oh, I object to that.

The Court: I think he may answer if he can testify to what happened each evening whenever they ceased working.

A. Any man that went out or off of the premises turned in his gun. Some of the men that stayed on the premises kept their guns with them.



Q. You know that yourself, do you?

A. Yes, sir.

Mr. Heyl: That's all.

The Court: Cross examine.

*Cross-Examination by Mr. Knoblock.*

Q. You don't know what the men did with those guns with reference to leaving them on the premises when they were at Hamilton and Keokuk, Iowa, do you?

A. They had instructions to leave them.

Q. I didn't ask you that. You don't know what they did with those guns at those places?

A. I wasn't out there, no.

Q. And the same thing applies to Effner, Indiana?

764 A. Yes.

Q. You made each man check in at the Peoria yards before leaving each night?

A. Yes, sir.

Q. To you personally?

A. Yes, sir.

Q. When did you buy these shells and guns from Louis Koren?

A. Well, I don't know the exact date.

Q. What's the approximate date?

A. I imagine it was—I imagine it was the 30th.

Q. 30th of December?

A. I think. I am not sure. I wouldn't swear to that.

Q. How many guns did you buy there?

A. I didn't purchase the guns.

Q. Who did purchase the guns?

A. The purchasing agent.

Q. Where were they purchased?

A. At Mr. Koren's.

Q. And that is the same Koren you mentioned that you bought the shells, is that right?

A. Yes. I bought some shells, and he bought some shells.

Q. How many guards did you hire on these trains altogether?

A. Well, there were eight on the train at the time on January 2.

Q. On what train? How many other guards did you have?

A. On the train?

Q. Yes.

A. I never had over eight at one time.

Q. Did you have any guards on the train going to Effner while this train was going to Hamilton?

765 A. Yes.

Q. How many did you have on that at the same time?

A. Two.

Q. That made ten guards that you hired specially?

Mr. Heyl: I want to object to this because the men have all testified to the number of guards on the trains; repetition.

The Court: He may answer.

A. I had two men on the train going east, and after the restraining order was put out I only had one man on each train, and that is all that has been on the train.

Q. I know that. How many guards did you have under your direction? That's what I want to know. On January 2, 1942?

A. I had twenty-nine.

Q. Twenty-nine guards?

A. With myself and two other regular men. That's all over the railroad. That's a two hundred and twenty-eight mile railroad.

Mr. Knoblock: I move the latter part be stricken.

The Court: No, I think it may stand.

Q. How many guards did you have, or special agents did you have, say, on December 25, 1941?

A. December 25?

Q. Yes.

A. I didn't have any.

Q. I am not asking you—

A. My three regular men. I have two regular men besides myself. Us three was working.

Mr. Knoblock: I hate to make this complaint, but it has been brought to my attention that witnesses have 766 been assisted from the counsel table, not from counsel, and I ask that be refrained from in the future.

The Court: I know nothing of that. There should be nothing of that kind.

Mr. Elliott: I know nothing about it.

Mr. Heyl: I think that is your imagination.

The Court: There isn't anything about this that ought to confuse us, anyway.

Anything else?

Mr. Knoblock: That's all.

*Redirect Examination by Mr. Heyl.*

Q. Mr. Kipling, what made it necessary from the 25th of December, 1941, until the 30th or 29th, to employ these additional men special agents?

Mr. Knoblock: I object to that.

The Court: I think we will sustain that.

We all know what made it necessary.

Mr. Heyl: That's all.

The Court: The strike came on, is what you mean?

Mr. Heyl: Yes.

The Court: I think we know that, that it is common knowledge.

767 ROY COOK, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Roy Cook.

Q. Where do you live, Mr. Cook?

A. Macomb.

Q. What is your business or occupation?

A. With the company, you mean?

Q. Before your employment, what was your business?

A. Painter.

Q. Were you employed by the plaintiff in this case on or about the 29th of December, 1941?

A. I was.

Q. And in what capacity were you employed?

A. Special agent.

Q. Where were you assigned?

A. I was assigned on the engine.

Q. What engine?

A. Number 40.

Q. Which direction did you travel?

A. East.

Q. On the first day, that was?

A. Yes, sir.

Q. What day was that? Let's get the date.

A. That was the 29th of December.

Q. 1941?

A. Yes, sir.

768 Q. You made the run to Effner and back, did you?

A. And back.

Q. What was the next run you had?

A. The same run.

Q. On what date?

A. That was on the 31st, and back on the 1st of January.

Q. And then what happened after that?

A. Well, I was assigned to the west run on the 2nd.

Q. On the 2nd day of January?

A. Yes, sir.

Q. 1942?

A. 1942, yes, sir.

Q. You were a special agent on that run?

A. Yes, sir.

Q. And were you armed with any weapon?

A. Yes, sir.

Q. What weapon did you have?

A. I had a 38 revolver.

Q. And who furnished that to you?

A. Mr. Kipling.

Q. That is the chief special agent?

A. Yes, sir.

Q. When he furnished it to you, what did he say to you with reference to the use of it?

Mr. Knoblock: I object to that.

The Court: He may answer.

Can't we agree he said the same thing to each one?

Mr. Heyl: We can agree if they will.

The Court: My only thought was it would save time.

769 Mr. Heyl: He instructed them not to use it except for purposes of—

Mr. Knoblock: Let the witness testify.

The Court: Go ahead if you want to.

Mr. Knoblock: I am not complaining, but he is doing the testifying.

The Court: Go right ahead and ask him. That is the reason I objected—didn't object, but thought we could agree that was what he said, but go ahead and ask every one.

Q. What did he say?

A. He told us not to use them unless we were justified in doing so.

Q. What do you mean by that?

A. If they attacked us.

Q. Personally?

A. Yes, sir.

Q. When did you get on this train?

A. Well, around about 8 o'clock.

Q. When you reached the switch at the Mills south of Peoria, did you get off the train?

A. I did, yes, sir.

Q. Who else got off?

A. There was a switchman, Mr. Ruddell.

Q. What did you do, if anything, when you got off?

A. I just followed him back to the switch, and stood there.

Q. Did you see any of the strikers there?

A. Yes, sir.

Q. Where were they?

A. They were along on the highway.

770 Q. How far from where you were?

A. Not over thirty feet.

Q. Did they say or do anything?

A. Well, yes, there was two of them that did.

Q. What did they do or say?

A. One of them had a club, and another drove up in a car, and one got out and stood in front of the car, and said to the fellow to get out of his road and let him take care of him. He spoke to the fellow that got out of the road, said, "Let that fellow in the car take care of him," then he made threats he wanted to come down and get the switchman.

Q. Did you recognize either of these men?

A. One of them.

Q. Who was it?

A. Mr. George Kneisley that had the club and made the threats.

Q. How long had you known him?

A. I didn't know him at that time, but they told me afterwards it was Mr. Kneisley.

Q. You afterwards learned his name, is that right?

A. Yes.

Q. Did you afterwards draw your gun, or do anything with your firearm?



A. I did not.

Q. Put your hand on it, or make any threatening moves?

A. I did not. I had my hand in my overcoat pocket.

Q. Did the switchman do anything?

A. No, sir.

Q. You completed the switching, and started on west, is that right?

A. Back to the locomotives, yes, sir.

771 Q. You again got into the cab of the locomotive?

A. Yes, sir.

Q. Where did you ride after you got in that time?

A. I rode on the locomotive.

Q. What part of it?

A. I was back to the coal tender.

Q. Was there a curtain there separating the locomotive cab from the tender in back?

A. No, sir.

Q. Was there a curtain there at all?

A. There was a curtain there, but it wasn't down.

Q. Where was it?

A. It was right at the back of the cab.

Q. Was that drawn?

A. It was rolled up, yes, sir.

Q. Rolled up?

A. Rolled up, yes, sir.

Q. Who, if anyone, was with you at that time?

A. Well, there were several on the engine, but I didn't know none of them.

Q. But back there on the tender where you said you were, was there anyone with you?

A. Yes, there was two other agents.

Q. Do you know who they were?

A. Mr. James was one of them. I didn't know who he was until after he was hurt, and they said it was James.

Q. Was there any others there?

A. There was several others there, but I didn't know their names.

Q. I want to know if there was any special agent  
772 besides yourself back in the tender.

A. No, at that time.

Q. Later did anybody get into the tender with you?

A. There was another special agent came back in the tender.

Q. When?

A. Just before we got to the Allied Mills.

Q. After you finished this switching?

A. Yes.

Q. Did you stop any after you finished the switching and set out the cars at this switch until this bottle throwing occurred?

A. No, sir.

Q. At the time the bottle was thrown, where were you standing?

A. I was standing back by the coal tender.

Q. Were you on the tender or on the floor?

A. On the floor.

Q. Who else was there with you?

A. Mr. James was standing there.

Q. Anybody else?

A. There was another gentleman, but I didn't know who he was.

Q. Was that before James was injured?

A. Yes.

Q. After James was injured, who was back there with you, if anyone?

A. There was another special agent back there.

Q. Did you see this bottle thrown?

A. I didn't see it thrown, but I seen it hit the boiler.

Q. Could you have seen it thrown from where you stood?

A. No.

Mr. Knoblock: I object.

The Court: I think the answer may stand.

773 Q. You were at that time standing back of this curtain?

A. Back of this curtain.

Mr. Knoblock: I object to the leading form of the question.

The Court: He has answered that. Go ahead!

Q. What happened after that?

A. When that exploded, I got some coal or cinders in my eye, and it set the engineer on fire, and I helped put the fire out on the engineer.

Q. What else did you do, if anything?

A. I was around there kind of holding my own with the rest of the boys. They was trying to save the engineer from burning up.

Q. What else?

A. That's about all I can remember of.

Q. Did you hear any shooting?

A. I did.

Q. Who shot?

A. Well, I, for one.

Q. Where did you shoot?

A. I was shooting out the curtain into the bank.

Q. What?

A. I was shooting in the bank, pulling the curtain apart.

Q. What do you mean by "the bank"?

A. Right down by the train.

Q. Is the track lower than the highway?

A. Yes, sir.

Q. How many times did you shoot?

A. I shot four shells.

774 Q. Did anybody tell you to do that?

A. The engineer and fireman.

Q. They did?

A. Yes, sir.

Q. Did you hear them give anybody else any directions?

A. No, sir.

Q. What was happening at that time?

A. Well, the boys was still fighting fire on the locomotive.

Q. What?

A. The boys were fighting the fire on the locomotive.

Q. What do you mean by "boys"?

A. The fireman.

Q. Who else?

A. That's all.

Q. Were there any stones thrown then?

A. Yes.

Mr. Knoblock: This witness is being led.

The Court: Ask him what went on.

A. Well, the stones were flying from the outside, and plenty of them, from both sides, from both sides of the locomotive.

Q. Did you shoot at anyone?

A. I did not, no, sir.

Q. Did you see anybody else back there do any shooting?

A. No, sir, I did not.

Q. You were the only one that shot?

A. As far as I know.

Q. In your presence, I am asking you.

A. In my presence; yes, sir.

Q. About how much higher was the road there at that place?

775 A. Well, I should say eight feet.

Q. Did you hear anyone shooting from any other place along there?

A. No, sir, I did not.

Q. From the road?

A. I did not.

Q. Was there any noise at that time around where you were?

A. Nothing but the rocks flying and the blow-off valve on.

Q. Where was the blow-off valve?

A. On the right hand side of the engine.

Q. Right hand side?

A. Yes, sir.

Q. Where was that turned on?

A. From the inside of the cab.

Q. Where was the engine when it was turned on?

A. Right along in front of the Allied Mills there.

Q. That made a noise, did it?

A. Yes, sir.

Q. Did you see any men along the road inside of the fence?

A. I did.

Q. And right-of-way?

A. I did.

Q. How did they get over the fence?

A. There was no fence over there. They just walked off the highway right in on the right-of-way.

Q. Over this ridge?

A. Yes, sir.

Q. How far was the highway at that point from the railroad tracks?

A. Well, I would judge thirty feet.

Q. What?

776 A. About thirty feet.

Q. Were these men down on the right-of-way, or were they on the road?

A. They were on the right-of-way.

Q. What did they have, if anything?

A. Rocks.

Q. Anything else?

A. That's all I could see were those rocks.

Q. What were they doing with the rocks? Playing with them, or what?

A. Throwing them; throwing them at the engine.

Q. How many were throwing?

A. Well, I seen four.

Q. Four men or four rocks?

A. Four men.

Q. And where did the rocks strike, if they struck anything?

A. They struck the back of the engine and the coal tender.

Q. How long did that continue? That throwing of rocks?

A. Well, a very few minutes.

Q. Then what happened?

A. We continued on the run.

Q. Did the engine stop finally?

A. No, it slowed down, but kept rolling along slowly.

Q. Anybody put out the fire on the engineer?

A. Yes, sir.

Q. Who was it?

A. Mr. McAvoy, the fireman, and myself.

Q. And how did you put it out?

A. With our hands.

Q. Was this shooting that you did before or after the fire?

777 A. After the fire.

Mr. Heyl: That's all.

*Cross-Examination by Mr. Knoblock.*

Q. How long have you lived in Macomb, Mr. Cook?

A. Four years.

Q. You were engaged as a painter over there all that time?

A. No, just two years as a painter.

Q. What else did you do there?

A. I worked with a contractor.

Q. What?

A. A contractor, concrete and bricklayer.

Q. Where did you live before you lived at Macomb?

A. Kansas.

Q. Canton?

A. Kansas.

The Court: State of Kansas.



Q. Whereabouts?

A. Southeastern part.

Q. What is the name of the town?

A. Pittsburgh.

Q. What type of work did you do there?

A. I was a salesman.

Q. What?

A. Salesman.

Q. And how long have you known Mr. Kipling?

A. Well, the 29th of December was the first I met Mr. Kipling.

Q. Your first meeting with him was on the 29th of December, 1941?

A. Yes, sir.

778 Q. Where did you see him?

A. At the yards.

Q. Who approached you, and sought to engage you in this guard work duty?

A. Well, Mr. Kipling when I came over that morning.

Q. And had you been employed prior to December 29?

A. No, sir, only just as a painter.

Q. When did Mr. Kipling first give you your gun?

A. The 29th day.

Q. You had just been in their employ a few hours until you were put on this Effner run, is that right?

A. Yes, sir.

Q. Have you ever had any special police work experience, or anything of that kind, before?

A. Two years as deputy sheriff.

Q. Where?

A. In Kansas.

Q. What county did you serve in?

A. Crawford.

Q. Crawford County, Kansas, and what is the county seat?

A. Girard.

Q. What years was that?

A. If I remember correctly, that was '32 and '3.

Q. Do you now hold any deputy sheriff's commission or any official capacity?

A. I do not.

Q. Mr. Kipling, when he hired you on the 29th of December, 1941, about how long a conversation did you and he have on that occasion?

779 A. About thirty minutes.

Q. And he just told you,—I mean he gave you a gun, which was a 38 special, is that right?

A. That's right.

Q. And some shells, and said, "Don't use this unless you are justified," is that right?

A. That's right.

Q. And on those two runs to Effner, Indiana, and back, there was nothing unusual happened on either one of those trips, was there?

A. On the last run I was taken off of the train at Fairbury, and brought in in a car.

Q. Who took you off the train?

A. One of the special agents come up and got me, and brought me in another car, and another man took my place.

Q. Do you know who that was?

A. Mr. Howe.

Q. Did you have his gun along on that occasion?

A. I couldn't tell you whether he did or didn't.

Q. You got off at Fairbury and, as far as you know, nothing unusual happened?

A. They said—

Q. As far as you know?

A. As far as I know, nothing happened.

Q. Did you have your gun with you as you traveled from Fairbury to Peoria?

A. Yes, sir.

Q. Now, as you left the T. P. & W. yards on the morning of January 2, 1942, about what time did you leave?

A. Well, it was around 8 o'clock.

780 Q. And who drove the train from the yards down to the Allied Mills?

A. Mr. Gulick.

Q. Mr. Gulick drove it all the way, is that right?

A. Well, no, Mr. Funk was on there part of the time.

Q. You mean handled the engine?

A. Yes, sir.

Q. Do you mean that he got off before you got to Allied Mills?

A. No, sir, he was still on the engine with us.

Q. He was?

A. Yes, sir.

Q. Nothing happened until you got down to the Allied Mills?

A. Yes, we were rocked at several different places between the yards and the Allied Mills.

Q. How many place would you say?

A. I should say three places.

Q. At least three?

A. Yes, sir.

Q. Can you tell me where those places were?

A. The first place was in front of the Blue Star Distributing Co.

Q. What else?

A. Then at several different places from there on. I couldn't tell you exactly, and I was behind the curtains, and couldn't see out where the places were.

Q. The curtains were down all the way?

A. Yes, sir.

Q. And when you got down to the Allied Mills, about what time did you arrive there?

A. Around 9 o'clock.

Q. Where was this switching done?

781 A. Well, just this side of the Allied Mills a little ways.

Q. When did you get out of the cab at the engine?

A. When they went back to do that switching.

Q. Who told you to get out of the cab of the engine?

A. One of the brakeman, head brakeman.

Q. You didn't see Mr. Kipling there on that occasion, did you?

A. No, sir, I did not.

Q. When you got down, you walked back how far with the brakeman?

A. I should judge about four car lengths.

Q. You saw Mr. Kneisley there. is that right?

A. Yes, sir.

Q. Mr. Kneisley never got on the railroad property on that occasion?

A. Not at that time.

Q. You didn't see anyone there throw anything at you?

A. Not at that time, no, sir.

Q. You say you didn't open your coat and put your hand on your gun,—

A. I did not.

Q. —and pull it half way out of the holster?

A. No, sir, I kept my hand in my overcoat pocket.

Q. Kept them there all the time?

A. Yes, sir.

Q. After you got through with your switching, you went on down the track?

A. Went back to the engine.

Q. How far south did you go from the Allied Mills when this incident occurred?

A. It was right in front of the Allied Mills when they threw the fluid.

782 Q. I am talking about the one farther south.

A. I couldn't tell you; about a quarter of a mile.

Q. When you explained this bottle as being thrown, was that there at the Allied Mills?

A. No, sir.

Q. You say that occurred right there at the Allied Mills?

A. Just this side a little ways.

Q. A little closer to Peoria? In other words, the situation occurred closer to Peoria than the Allied Mills?

A. It was— No, sir, it was closer to the Allied Mills.

Q. That's true, but I mean Allied Mills is on the other side of where this situation occurred, is that right?

A. Yes, sir.

Q. You say there by the Allied Mills there is a high bank along the track, is that true?

A. About six or eight feet. Eight feet, I should judge.

Q. How far were you off the ground when you are in the cab of the engine standing up?

A. I should judge about eight feet.

Q. And when you were firing that gun, were you firing it with the level of the ground or above it?

A. No, sir, I was shooting straight down.

Q. Straight down?

A. Yes, sir.

Q. Now, you say the engineer and the fireman told you to shoot?

A. Yes, sir.

Q. How close was Gulick standing to you when you were shooting?

A. He was on the engineer's seat, and I was back by the tender.

Q. Did he yell your name to you to shoot, or how did he say it?

783 A. He just said, "Boys, shoot!"

Q. What was the fireman's name?

A. McAvoy.

Q. What did he say?

A. He told us to shoot.

Q. What did he say?

A. He said, "Shoot!"

Q. You were the only one of the special agents that followed that instruction, is that right?

A. As far as I know, yes, sir.

Q. How far was Mr. McAvoy from you when you were shooting?

A. Over on the left side of the cab.

Q. How far was he from you?

A. About four feet.

Q. How far in feet was Gulick from you?

A. I imagine about the same distance.

Q. You shot those four shots one right after the other?

A. Yes, sir.

Q. How many shots did you have in your gun?

A. Six.

Q. There was only one man there on that occasion that you observed that you know at this time, and that is George Kneisley?

A. That's right.

Q. And George Kneisley never came upon the railroad property at any time that you saw him?

A. Not at that time, no, sir.

Q. Well, any other time?

A. No, sir.

Q. You never saw any of them come on railroad  
784 property there, did you?

A. Those five that were at the engine throwing rocks after the fluid was thrown in the cab.

Q. Wasn't that right there at the Allied Mills?

A. Yes, sir.

Q. A little this side of Allied Mills?

A. Yes, sir.

Q. When you speak of that, that is the bottle you say you saw hit the front of the engine?

A. Yes, sir.

Q. And became ignited?

A. Yes, sir.

Q. You say you were shooting through the curtain?

A. I pulled the curtain to one side.

Q. You pulled the curtain to one side?

A. Yes, sir.

Q. Then you could see where you were shooting?

A. Yes, sir.



Q. Was the engine moving while you were shooting?

A. Yes, sir.

Q. If you could see where you were shooting, there was no one in front the range of your gun at that time?

A. No, sir, there was not.

Mr. Knoblock: I think that's all.

The Court: Is that all?

Mr. Heyl: That's all.

785 WILLIAM J. HUNTER, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. William J. Hunter.

Q. Where do you live?

A. 330 Caroline Street, Pekin.

Q. What is your business or occupation?

A. Trainmaster's clerk, T. P. & W. Railroad.

Q. Where is the place of your business?

A. East Peoria yards.

Q. How long have you had that position?

A. Five and a half years.

Q. What are the duties of your employment?

A. Well, do all the stenographic work in connection with the trainmaster's work, check demurrage car reports.

Q. Are you acquainted with the train employees of the railroad?

A. Yes, sir.

Q. And how long have you known the train crews of the railroad?

A. Most of them ever since I have been there.

Q. Is that a part of your duty, to know these men?

A. Yes, sir.

Q. I will ask you to look at the photograph which I have heretofore had the reporter mark "Plaintiff's Exhibit 1", and ask if you can name the men whose pictures appear on that exhibit.

A. I can name part of them.

Q. All right.

786 A. Raymond Tinsman.

Q. You will have to identify them in some way.

Mr. Elliott: From left to right.

A. From left to right?

Q. Yes.

A. The third man from the left is Raymond Tinsman, and Alvin Overacker.

Q. Is he the one that is leaning on the sign that says "Strike" on the card?

A. Yes, sir. Earl White.

Q. That's the one holding the sign on the stick in his hand, and that has the sign at the top "Strike"?

A. Yes, sir.

Q. He also has a pipe in his mouth?

A. Yes. Howard P. McCowan.

Q. Is that the one in about the middle of the picture with a club over his right shoulder?

A. Yes, sir.

Q. Who is the next man standing?

A. Clement H. Kirk.

Q. And next to him?

A. Lawrence F. St. Clair.

Q. The two men at the right, one with his back to you and one with his head down, do you know who those two are, or are you able to identify them?

A. I can't tell from the way they are standing.

Q. Who is the man in the foreground of the picture seated with the club over his shoulder?

A. Oliver Kirk.

787 Q. Who?

A. Oliver Kirk.

Q. Are these all former employees of the T. P. & W.?

A. Yes, sir.

Q. There are two at the left end of the picture, left side of the picture, partly turned, their faces turned. Do you know who they are, or are you able to identify them?

A. One of them looks like William Christoff, the second fellow there.

Q. The second one?

A. Yes, but the other fellow I couldn't say.

Q. The first man with the club or stick in his right hand, are you able to identify him?

A. No, sir.

Q. Is that because you can't see his face?

A. Yes, sir.

Q. Can you tell us where that picture was taken? What's the location?

A. Well, it appears to be at the entrance of the road leading into the East Peoria freight house of the T. P. & W.

Q. That's not the entrance from the lane from the hard road, is it?

A. You mean into the East Peoria yards?

Q. Yes.

A. No, sir.

Q. This is the entrance from West Washington Street, is that right?

A. Yes, sir.

Q. And did you see that picture published in any of the Peoria papers?

A. I didn't see it published. I saw a copy of it 788 after it was cut out of a paper.

Q. Do you remember what day it was in the paper?

A. No, I don't, because I didn't see the paper itself.

Q. You didn't take the picture, did you?

A. No, sir.

Q. Does that picture correctly and accurately show what it purports to show, and what you stated you could identify?

A. Yes, sir. I know all of them well.

Mr. Heyl: I offer in evidence the photograph that has been identified by this witness, and marked "PLAIN-TIFF'S EXHIBIT 1".

Mr. Knoblock: We object to it.

The Court: Is that all with this witness?

Mr. Heyl: I want to ask him a few more questions.

The Court: Perhaps you had better do that.

Q. Did you see men at this point you have indicated, and a point you say is shown by this photograph, at various times during this strike?

A. Yes, sir.

Q. What did they have in their hands?

A. Some of them had clubs in their hands.

Q. How many days did you observe that these strikers had clubs in their hands?

A. Oh, I would say about three.

Q. With reference to the entrance at the lane leading from the hard road down to the premises, what did you observe there with reference to the pickets? What did they have in their hands?

A. Clubs and paddles and sticks.

789 Q. When you drove in the premises on the lane, did you observe what these men were doing with the clubs?

A. Well, when I drove in all that I saw them doing was carrying them.

Q. Were they standing or seated?

A. Standing, walking.

Q. What is it?

A. Walking.

Q. Did you observe their movement or actions at times when other people drove in?

A. Well, no, I didn't because I usually just came in, the only car in at the time.

Q. Did you observe the action of these men there at the other point, being the point shown by Plaintiff's Exhibit 1, at other times than when you came in?

A. No, sir.

Mr. Heyl: I offer the exhibit.

Mr. Knoblock: I object.

The Court: Do you care to cross examine?

Mr. Knoblock: Oh, yes.

The Court: You may proceed with your cross-examination.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Hunter, you have been the trainmaster here at the T. P. & W. for five and a half years, is that right?

A. Trainmaster's clerk.

Q. Now, you said that going in and out of the premises there on some occasions, that you had seen the pickets  
790 on the line in this exhibit here carrying clubs and so forth, is that right?

A. Yes, sir.

Q. Never on a single occasion were you ever threatened by those pickets, were you?

A. No, sir.

Q. Never on a single occasion did you ever see those pickets threaten anyone else on that lane, did you?

A. No, sir.

Q. Now, as is indicated in this exhibit here, these pickets had fires going around which they gathered to keep warm, isn't that right?

A. Yes.

Q. And they used these clubs to stir up the fire, and put wood on the fire?

Mr. Heyl: I object as assuming more than a fact.

The Court: He may answer.

Mr. Heyl: If he saw them put wood on, he may; otherwise, it is a conclusion.

Q. All right! On occasions you saw these strikers putting wood on these fires to keep warm, isn't that right?

A. Well, I can't say that I ever saw—I ever saw them put any wood on the fire, but I saw the fire burning.

Q. Wood was the material being used?

A. Wood and coal.

Q. Wood and coal, and you saw them use these sticks and clubs to stir it up?

A. No, I didn't.

Q. Mr. Heyl: Objected to as assuming.

The Court: He may answer.

791 Q. When you entered—on the occasion when you entered the premises of the plaintiff there off of Route number 24, going down the lane to the roundhouse, you say you went through that picket line?

A. Yes, sir.

Q. Never on one single occasion were you threatened there?

A. No, sir.

Mr. Heyl: He answered that.

The Court: Maybe it was a different occasion.

You were never threatened at any time?

A. I was never threatened.

Q. And you never saw anybody else threatened?

A. No, sir.

Mr. Heyl: He answered it before. I object to the repetition.

The Court: He may answer.

Do you still object to the picture?

Mr. Knoblock: I don't think there is any proper foundation. Do you want to object or not?

The Court: Objection sustained.

Is that all with this witness?

Mr. Heyl: Yes, sir.

The Court: We will take a recess for a few moments.

(Recess.)

792 LLOYD T. DORAN, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Elliott.*

Q. What is your name?

A. Lloyd T. Doran.

Q. Where do you live?

A. Forrest.

Q. What is your age?

A. Thirty-six.

Q. What is your business?

A. Section foreman.

Q. For what company?

A. T. P. & W.

Q. How long have you been section foreman for the T. P. & W.?

A. Five years.

Q. As section foreman, what, if anything, do you have to do as a part of your duties of patrolling the track? Is it a part of your duty to patrol the track?

A. Yes, it is.

Q. What is the purpose of patrolling the track?

A. To see that everything is O. K.

Q. On December 31 were you patrolling the track near Forrest?

A. I was.

Q. Did you patrol the track the day before also?

A. I did.

Q. On the 30th did you find the switches and switch lamps and attachments in good condition?

A. I did.

793 Q. You may tell us what you found when you patrolled the track on December 31.

A. I found a switch at the east end of the Long Branch track at Forrest locked open.

Q. Locked open?

A. It was open and the switch lock throwed away. There was no switch lock there.

Q. What else?

A. It was lined two and a half inches open. It would leave the points—

Q. Was that fully opened?



A. No.

Q. About how wide would it be if was fully opened?

A. Five and a half inch throw on one side?

Q. This was two and a half?

A. Yes.

Q. What effect would that have upon a train proceeding toward the point of that switch when it was only half open?

A. It would have went on the ground.

Q. What did you discover with reference to the switch stand and switch lamps? What did you discover with reference to the switch lamps at that place?

A. Well, they was busted, the lens all broken out of them.

Q. Were they in good condition the day before?

A. Yes, sir.

Q. Did you see any object around there where the switch lamps had been broken?

A. No, I didn't.

Q. Did you observe any footsteps around?

794 A. I did.

Q. Was there snow on the ground?

A. Yes.

Q. From which direction had those footsteps come to this switch?

A. Come from the hard road to be going north.

Q. What hard road was that?

A. Route 24.

Q. Is that the route that goes east and west, paralleling the T. P. & W.?

A. Yes.

Q. Where is this west switch from the Forrest depot?

A. Well, I imagine it's about eighty rod from the depot.

Q. Is that one of the regular switches that are used by the T. P. & W. in the handling of its trains?

A. Yes.

Q. And by being half open, it would have thrown the train on the ground?

A. Going west.

Q. One going west?

A. Yes.

Q. Did you observe any other switches?

A. One at Chatsworth.

Q. What did you observe with reference to the switch at Chatsworth?

A. The lamp was broken on the switch at Chatsworth.

Q. Had you patrolled the track the day before?

A. Yes, sir.

Q. Was the lamp in good condition at that time?

A. Yes, sir.

Q. Did you observe any footsteps in the snow around this switch?

795 A. Yes.

Q. What direction had they come?

A. From the hard road.

Q. This same hard road, number 24?

A. Yes, sir.

Q. What sort of tracks were they?

A. Just footprints. They was partly covered with snow.

Q. Did you observe those tracks at two different places?

A. Yes, sir.

Q. You may state whether they were similar tracks.

A. They was similar tracks, just regular foot tracks.

Q. And each leading to the hard road?

A. Yes, sir.

Q. Did you find anything that had been used to batter the lamps?

A. No, I didn't.

Q. See any splinters around there?

A. There was wood splinters on the one at Forrest, but I didn't notice any at Chatsworth.

Q. Wood splinters at Forrest?

A. Yes.

Q. Tell what those splinters were like.

A. Just shavings of wood is all that showed on it.

Q. How many of the lens in the switch lamps were broken out?

A. They were all broken.

Q. How many lens are there in a switch lamp?

A. Four.

Q. They had all been broken out?

A. Yes.

Q. How about the locks?

796 A. The locks on the switch at Forrest were gone.

Q. Did you find the locks at Chatsworth?

A. Yes, it wasn't opened or nothing, the switch there broken.

Q. Just the lamps were broken?

A. Just the lamps.

Q. With the lamps broken, would there be any indication as to the condition of the switch at night?

A. The trainmen wouldn't know for sure whether the switch was right if they couldn't see the lamp.

Q. Were those main line switches?

A. Yes, sir.

Q. So that a train moving over the main line would have the necessity of seeing these in order to know what the switch was? It would be necessary to see those lights?

A. Yes, sir.

Q. And they were broken out?

A. Yes.

Q. Were all the lens broken out at Forrest?

A. Yes.

Q. And also at Chatsworth?

A. Yes.

Q. Did you immediately report to your superiors—

A. I did.

Q. —what you had found?

A. I did.

Q. Had you ever before this 31st of December found switches in that condition with the lamps broken?

A. No, I haven't.

Mr. Elliott: You may cross examine. Just a moment.

797 Q. Did you patrol near LaHogue?

A. No, sir, I didn't.

Q. Are you familiar with the way trains are operated on the main track through Chatsworth?

A. Yes.

Q. Are they operated at a high or slow speed?

A. Slow speed, thirty-five mile an hour; supposed to be over the I. C. crossing over—

Q. At Chatsworth?

A. Yes.

Q. How about approaching from the west into Forrest?

A. They have to slow down for the Wabash, but they come in pretty fast. They have to cross the Wabash.

Q. They cross the Wabash at right angles there?

A. Yes, sir.

Mr. Elliott: That's all.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Doran, these things you have testified to, you discovered on—all of them on December 31, 1941, is that right?

A. Yes, sir.

Q. On no other occasion have you discovered anything unusual in your territory of any character, is that right?

A. That's right.

Q. Now, you did not see anything done to those switch lamps and to those locks there, did you?

A. No, I didn't.

Q. If anything was done to them, you don't know by whom?

798 A. No, I don't.

Q. And you have no knowledge of any kind as to who may have tampered with those things?

A. No.

Q. Now, the absence of a switch lamp requires the engineer to stop, does it not?

A. Supposed to stop, yes.

Q. If he obeys that rule, there is no danger, is that right?

A. That's right.

Q. So a compliance with the rules would eliminate any danger in that regard?

Mr. Heyl: Objected to as asking for a conclusion.

The Court: Yes, I think he has answered.

Mr. Knoblock: All right. That's all.

799 SHERMAN HINDERLITER, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Elliott.*

Q. What is your name?

A. Sherman Hinderliter.

Q. Where do you live?

A. Watseka, Illinois.

Q. What is your business?

A. Section foreman on the T. P. & W. Railroad.

Q. How long have you been section foreman?

A. Fourteen years.

Q. As section foreman, do you have anything to do with the patrolling of the tracks?

A. Yes, sir.

Q. Over what section of track do you have jurisdiction?

A. The main track through Watseka, Crescent City and Leonard.

Q. Over how many miles?

A. Twelve miles and a half.

Q. Did you or not patrol your track on December 30?

A. Yes, sir.

Q. I will ask you what the condition of the switches and switch lamps were on December 30.

A. They were O. K. the last time I was over.

Q. About what time of the day did you go over those tracks?

A. It was about 4:30 when I went east.

Q. In the afternoon?

A. In the afternoon, yes, sir.

800 Q. Then on the morning of December 31 did you patrol the track?

A. Yes, sir.

Q. What, if anything, did you discover with reference to the switches and switch lamps at Crescent City?

A. I found the east lamps at Crescent City with the lights broken out, the lens.

Q. How many lens are there in the switch light?

A. Four.

Q. How many of them were broken out?

A. Four.

Q. What, if anything,—Where was that switch with reference to the Crescent City station?

A. Well, it was, I should judge, about five hundred yards east of the depot.

Q. And which way to the switch points point?

A. Well, they point to the east.

Q. Was the switch in any way changed?

A. No, the lock was gone off of the stand.

Q. Were you able to find that lock?

A. No, sir.

Q. Was the switch stand locked the day before?

A. Yes, sir.

Q. Is it the custom to keep all of the switches locked?

A. Yes, sir.

Q. This lock had been removed, and you couldn't find it?

A. That's right.

Q. After you made the inspection at Crescent City, where did you go?

A. I went west to Leonard.

Q. How far is that from Crescent City?

801 A. That's about three miles and a half.

Q. That was still on your circuit, was it?

A. Yes, sir.

Q. What did you find when you got to Leonard with reference to the switches?

A. I found three of the lens broken out of the lights on the east switch at Leonard.

Q. And did you find anything with reference to the other switches there?

A. No, there was only three lens broken out.

Q. And there are four lens in the ordinary one?

A. Four lens in the light.

Q. What did you find with reference to the location of the switch, as to whether it was open or closed?

A. It was closed.

Q. Did you see any tracks around either of those?

A. No, sir, no tracks.

Q. Then again in the afternoon on December 31 did you continue to—your patrolling of the track?

A. Yes, sir.

Q. And where did you patrol the track at that time?

A. The same direction: Watseka, through Leonard, Crescent City and Leonard.

Q. What did you find when you got back to Crescent City?

A. I was told by—

Q. What was told wouldn't be proper. What did you discover?

A. I found two knuckles off of the car set at the elevator for loading was gone, and the pins was gone.

Q. Explain what you mean by the knuckles and pins.

802 A. The knuckles are set in the draw bar to hold the two cars together when you couple up, the pin running through the knuckle and draw bar.

Q. Is it necessary to have a pin in order to couple the cars?

A. Yes, sir.



Q. And they had been removed?

A. They had been removed.

Q. Did you make any search to try to find those pins?

A. Yes, sir.

Q. What was your success with reference to that search?

A. There was nothing around there.

Q. You were not able to find them?

A. Not able to find them at all.

Q. Had you had any reports as to pins being missing from these cars before?

A. No.

Q. Is it a part of your duty to observe those things?

A. Yes, we are supposed to observe all things of that nature.

Q. Had the knuckles themselves been removed from the two cars?

A. No, sir, just one car there.

Q. Just one car?

A. And the knuckle from each end was gone.

Q. Was it possible to couple on to that car without knuckles?

A. No, sir, unless there were pins.

Q. That would be the only way?

A. The only way.

Q. Were those cars at Crescent City set for loading anything?

A. Yes, sir.

Q. What?

803 A. Grain.

Q. You found no visible footprints around there?

A. No.

Q. Were those main line switches?

A. Yes.

Q. At Leonard and at Crescent City?

A. At Leonard and Crescent City both.

Q. Is that high or low speed territory through there for trains?

A. Well, pretty high.

Q. Approximately how much per mile do the trains run there?

A. Run around sixty miles an hour.

Q. With the lens broken out of these switch lamps, it would be impossible to tell how the switches were set, wouldn't it?

A. That's right.

Q. It is necessary to have those lamps there at night to determine how the switches are set?

A. Yes.

Q. Both these switches extended and connected with the main track?

A. Yes.

Q. Were one of those switches lined for the main track?

A. No.

Q. From the main track to the side track?

A. No, they were in their natural position.

Q. But the lights were gone?

A. The lights were gone.

Mr. Elliott: All right!

804

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Hinderliter, all trainmen have keys to the switch locks, do they not?

A. I presume they do.

Q. And a member of any train crew that may be running over that line any particular day have keys to those locks?

A. I suppose they do.

Q. What was the time the last train passed that territory on December 30, 1941?

A. Well, sir, I couldn't tell you.

Q. Whenever a switch light is out, the railroad requires the engineer to bring the train to a stop, does it not?

A. Yes, sir.

Q. And under the rule, then, if a train were brought to a stop there would be no possibility of an accident, would there?

A. No, not if they would bring it to a stop.

Q. You didn't see anybody around those switch locks or switch lamps in your territory, did you?

A. No, sir.

Q. If anything was done there, you don't know by whom, do you?

A. No, sir.

Q. And you don't know when, do you?

A. No, sir.

Q. And on the 31st of December, 1941, the trains over

those lines had been driven or had been run by different employees than formerly, isn't that right?

A. That's right.

Mr. Knoblock: That's all.

805

*Redirect Examination by Mr. Elliott.*

Q. On the 30th the switches were all right, weren't they?

A. Yes, sir.

Mr. Elliott: That's all.

LESTER V. MEENTS, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Elliott.*

Q. Mr. Meents, you may state your name.

A. Lester V. Meents.

Q. Where do you live?

A. Sheldon, Illinois.

Q. What is your age?

A. Thirty-four.

Q. And what is your business?

A. Section foreman.

Q. For what company?

A. T. P. & W. Railroad.

Q. How long have you been section foreman for the T. P. & W.?

A. Ever since 1936.

Q. What is your section? Over what territory?

A. Section number 1 that goes from Effner to Watseka.

Q. Effner to Watseka? Does that pass through Sheldon?

A. Yes, sir.

Q. Is it or not a part of your duty to patrol the tracks?

A. Yes, it is.

806 Q. And I will ask you whether or not you patrolled the tracks on the 30th of December.

A. I did.

Q. What time in the day did you patrol the tracks?

A. Well, I patrolled three times during the day time, and then again at night ahead of that extra.

Q. When you patrolled it three times during the day time, what was the condition of the switch and switch stands?

A. O. K.

Q. Then you patrolled it ahead of one of the trains on the evening of December 30?

A. Yes, sir.

Q. From what point to what point?

A. From Effner to Watseka.

Q. By what means of conveyance were you traveling?

A. Motor car.

Q. And ahead of what train?

A. The extra east.

Q. About how far ahead of the train were operating your motor car?

A. About two miles.

Q. As you proceeded east, what, if anything, did you find with reference to the switches at Sheldon?

A. There was two switches at the west edge of Sheldon called number "14" and "15" that were lined red and locked.

Q. Lined red and locked? By lining them red, that would indicate what?

A. They was lined for the side tracks.

Q. Were they completely opened?

A. Yes, sir.

807 Q. Was this train that you were patrolling ahead of to go in on any one of those switches?

A. No, he wasn't supposed to.

Q. What did you do when you found that those switches were lined red?

A. I lined them properly, and reported.

Q. Could the switches be changed from lining for the main track to lining for the side track without unlocking them?

A. No, they couldn't.

Q. You don't know who unlocked them?

A. No, I do not.

Q. Had there been any train over that track between the time you patrolled in the morning and this patrolling at 9:30 at night?

A. No, there wasn't. No, there wasn't.

Q. How far were these switches from the hard road?

A. Oh, about a quarter of a mile.

Q. Are there any cross roads near these switches?

A. That is the one I am talking about.

Q. How far was the east and west road from the track?

A. Oh, I would say a good half mile.

Q. And the north and south cross road was about a quarter of a mile?

A. About a quarter of a mile, yes.

Q. That is the cross road from Route 24?

A. Yes.

Q. Did you find anything with reference to the switch lamps?

A. Both of them, number 14 and 15, were broken.

Q. What was the extent of the breaking of those switches?

A. They was damaged so they wouldn't be able to be  
808 used, used any more. The lights were out.

Q. How was the target on the switch?

A. They were bent up.

Q. From the condition of the target in the day time, would it be possible for the engineer to tell how the switch was lined?

A. No, he couldn't.

Q. What?

A. It would be impossible to tell.

Q. What is the target on the switch?

A. The target is a banner with two different colors to indicate whether the switch is throwed for the main or the side track.

Q. Indicating that it is thrown for the main track—

A. It is green, and the side track red.

Q. And for the side track it is—

A. Red.

Q. Were these targets bent so he couldn't tell what showed?

A. He couldn't tell any color.

Q. What about the lens in the lamps?

A. They were broken out.

Q. How many lens were broken out?

A. All four of them.

Q. On both of these switches?

A. On both of these switches.

Q. Did you or not observe any tracks around those switches?

A. It was snowing, and I couldn't see any tracks. It was snowing pretty heavy.

Q. It was snowing pretty heavy at that time?

A. Yes.

Q. And at 9:30 at night was after dark?

809 A. Yes.

Q. Was there anything in the condition of those switches to indicate to the engineer whether the track was clear or otherwise?

A. He couldn't tell anything.

Q. You discovered those, and stopped the train, did you?

A. Yes.

Q. Did you proceed on further?

A. Yes, sir.

Q. What, if anything, did you find with reference to the switches?

A. That was all that was done.

Q. To these two switches?

A. Just those two.

Q. You say there had not been any train over those tracks from the time you patrolled them in the morning until this train you were proceeding?

A. I don't know about the day time, but from 6:30, when we started out, until we got back, there hadn't been any trains.

Q. Did you at once report what you found with reference to these switches—

A. Yes, sir.

Q. —and to your superior? You have been working for the company how long?

A. Ever since 1936.

Q. You were in the performance of your regular duty at that time?

A. Yes, sir.

Q. This was at Sheldon?

A. At Sheldon.

Q. And both at the west end of the town?

A. Yes, sir.

810 Q. Did you or not find anything with reference to the telegraph wire at Webster?

A. Yes, the next morning when it was daylight and you could see, I found wire that looked like it might have been cut.

Q. Where was that with reference to Webster?

A. About a mile and a quarter west.



Q. Was that one of the telegraph wires?

A. Yes, sir.

Q. Just describe to the court what you saw with reference to that.

A. The wire had been cut on each side of the pole. The piece of wire with the insulation was wrapped around the other two wires.

Q. How high are these telegraph wires from the ground?

A. That pole where that wire was cut is about ten or twelve feet high.

Q. That was on the T. P. & W. right-of-way, was it?

A. Yes, sir.

Q. Is that one of the telegraph wires that the company uses in the operation of its business?

A. Yes, sir.

Q. For the purpose of transmitting messages back and forth—

A. Yes, sir.

Q. —to its agents?

A. And dispatchers.

Q. You were along there the day before, weren't you?

A. Yes, sir.

Q. Was that wire broken and cut before?

A. I didn't notice it the day before.

Q. You saw nothing wrong with it the day before?

A. No, sir.

811 Q. How close is this wire to the railroad tracks? How close are the poles to the rails of the track?

A. Oh, about twenty-five feet.

Q. And within the railroad right-of-way?

A. Within the railroad right-of-way.

Q. How close was this place where the wires were cut to the hard road?

A. Well, about three-quarters of a mile.

Q. And that is hard road 24?

A. Yes, sir, 24.

Q. Had it been snowing during the night?

A. It snowed during the night.

Q. Could you observe any tracks around there?

A. Couldn't see any tracks.

Mr. Elliott: You may cross-examine.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Meents, you say you patrolled this section from Effner through Sheldon to Watseka on December 30, 1941?

A. Yes, sir.

Q. Did you find anything wrong that day?

A. Not a thing that day-in the day time.

Q. At night is when you were speaking about finding this switch lamp damaged?

A. Yes, sir.

Q. And a switch lamp, when the lights are broken out, according to the rules that requires the engineer to bring his train to a stop?

A. Yes, it does.

812 Q. Therefore, if the rules had been obeyed in this instance, there would have been no accident?

Mr. Heyl: I object to that question.

The Court: Yes, to the latter part objection sustained.

Q. Sheldon is also within yard limits where trains move slowly, is that true?

A. Yes, sir.

Q. Then the next day— Also, all trainmen have keys to the switch locks, do they not?

A. Yes, sir.

Q. And on the 30th and 31st new crews have been operating trains over these roads, isn't that correct?

A. Yes, sir.

Q. Now, the next morning you say you saw this wire near Webster. That may have been in the same condition the day before, could it not?

A. Yes, it could have been.

Q. It may have been two or three days before that?

A. I have been watching the wires closer than that.

Q. But it could have been the day before, isn't that true?

A. Yes, it could have, but I doubt it.

Mr. Knoblock: I move the latter part be stricken.

The Court: Yes, it may be stricken.

Q. Now, those telegraph wires at times break, isn't that true?

A. Yes, sir.

Q. And during winter, when there is ice and snow, there is a greater tendency to break than in normal weather, and you say this wire you are speaking about looks like it  
813 had been cut. You aren't absolutely sure it had been cut?

A. Not absolutely sure it had been cut.

Q. You saw no one around those switch locks or lamps or wire at any time?

A. No, sir.

Q. If anything was done to them in any manner or form, you don't know by whom or when?

A. No, I don't.

Mr. Knoblock: That's all.

*Redirect Examination by Mr. Elliott.*

Q. If the telegraph wire had broke, it wouldn't wrap around in the way which you found it, would it?

Mr. Knoblock: I object to that.

The Court: I think the objection will be sustained.

Q. How was it wrapped around the other wires?

A. It was twisted around the wires. The insulation was off the poles and both ends twisted.

Q. Were both ends twisted?

A. Yes.

Q. Was it wrapped around the pole?

A. No, it wasn't wrapped around the pole, but between the poles.

Q. And both ends of the broken wire were twisted around the other wires?

A. Yes, sir.

Q. What did you have to do to get those wires loose, or did you have anything to do?

A. Yes, I had a temporary repair.

Q. Tell the court what you had to do to make a temporary repair.

814 A. Had to untwist the wires, and we cut in a piece so we could have it fastened together again.

Q. How many times were the ends of these wires wrapped around the other wires?

A. I would say about twice.

Q. You had to unwind them twice and splice them in order to make the connection?

A. Yes, sir.

Q. What did you use to do that?

A. Our hands.

Q. What kind of tools did you use?

A. Pliers.

Q. You used the wires?

A. Pliers.

Q. Pliers similar to what you use in an automobile?

A. Yes, sir.

Q. They asked you about—if all trainmen didn't have keys. The striking trainmen also had keys, didn't they?

Mr. Knoblock: I object. He wouldn't know.

The Court: I think it is admitted that they did have. All trainmen had keys?

Mr. Elliott: Yes.

The Court: I think I will sustain that.

A. Yes.

*Recross Examination by Mr. Knoblock.*

Q. On December 29, on December 30 and on December 31, new crews were handling trains over your section of that road?

815 A. Yes, sir.

Mr. Knoblock: That's all.

Mr. Elliott: That's all.

CHARLES SETH, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Elliott.*

Q. What is your name?

A. Charles Seth?

Q. Speak louder! Where do you live?

A. Watseka, Illinois.

The Court: Where?

A. Watseka, Illinois.

Q. What is your business?

A. I am an agent at Chatsworth for the railroad.

Q. What railroad?

A. T. P. & W.

Q. How long have you been agent there?

A. I started the 30th of December, 1941.

Q. As agent did you receive any report with reference to cars having knuckles or pins missing?

A. You mean when I first started?

Q. Yes.

A. No.

Q. Did you on December 31? That is the day before New Year's.

A. Yes.

816 Q. What examination did you make of the cars at Chatsworth?

A. Well, after I was told—They told me there was some gone. I went around and looked at all of them, and there were four missing.

Q. Tell us what were missing from the ends of those cars?

A. The knuckles and pins.

Q. On how many cars?

A. Three cars.

Q. How many knuckles were gone?

A. Four.

Q. And how many pins were gone?

A. Four.

Q. Was it possible to couple those cars together with the knuckles and pins gone?

A. No, sir.

Q. Was it possible to connect those cars to any other cars or train that come in when the knuckles and pins were gone?

A. One end could have been on some; on two of them.

Q. Did you make any search to try to find those knuckles and pins?

A. I looked up and down the track, and didn't see them anywhere.

Q. You were on duty during that time?

A. When I examined them?

Q. Yes.

A. Yes.

Q. Had you taken any of those knuckles or pins—

A. No.

Q. —from the cars?

A. No.

Q. Do you know anyone that did take them?

817 A. No.

Q. Where were these cars with reference to the Chatsworth station?

A. One was west of the station at one elevator, and the other was east of the station at the other elevator, and one of them was a little bit west of the station.

Q. Were they set for loading?

A. Two of them.

Q. At what places?

A. At the elevators.

Q. Did you, in your examination, notice any footprints in the snow?

A. Yes.

Q. Tell us just what you saw with reference to those footprints, and where they led from and to.

A. Well, you could see around the ends of the cars there was footprints there, but you couldn't tell after you got back to the road or crossing. There was so many cars you couldn't tell where they went to.

Q. How close were these cars to the crossing?

A. Well, maybe fifty or sixty feet, one of them.

Q. One was fifty or sixty feet? Which was that, the east or west car?

A. That was the west one.

Q. When you went up to the other car, did you see footprints in the snow?

A. There was lots of them there. Most had been made in the day time.

Q. Were they or not similar footprints?

A. Most all footprints look alike.

Q. How close was this east car to any cross street?

818 A. Well, not very much farther from the other road.

Q. Was any one of the pins or couplers found?

A. A man that works for the elevator found one of them in the coal shed.

Q. Did he report that to you?

A. He brought it up to me.

Q. That was the only one of the pins or knuckles that you found?

A. Yes.

Q. Or that was turned in to you?

A. Yes.

Q. Do you know when those cars were set out on the side track?

A. They was there before I came— Before I started to work there.

Q. Had you had any report as to any knuckles or pins being missing before the examination that you made?

A. No.

Q. Did you report these missing pins and knuckles to your superior?



A. Well, I reported it to another agent, and he told them.

Mr. Elliott: That's all.

*Cross-Examination by Mr. Knoblock.*

Q. How long have you lived in Watseka?

A. Pardon?

Q. How long have you lived there at Watseka?

A. All my life.

Q. What is your age?

A. Nineteen.

Q. Had you ever had any railroad experience before as an agent when you went to work on December 30?

A. Not as an agent, no.

819 Q. When you say that somebody found a knuckle in the coal shed of the elevator— Is that right?

A. Found a pin.

Q. Found a pin, but you don't know whether that pin came from one of these cars or from some other cars set a long time?

A. As far as I know, all pins are the same.

Q. You don't know whether that pin that was turned in came from these cars or not?

A. No.

Q. You didn't know anything had happened around there at all until somebody reported this to you?

A. That's right.

Q. Was that the section foreman?

A. No, a man that works at the elevator.

Q. A man that works at the elevator told you about it, and you have no knowledge of who did it or when it was done, is that right?

A. That's right.

Q. And you say this occurred on December 31, 1941, is that true?

A. That's when it was reported to me.

Q. That's when you noticed it?

A. Yes.

Q. And new crews had been operating trains over that road from December 29 on, isn't that correct?

A. I don't know about the date, but I guess there was new crews on there.

Q. And several trains had been operated over that

road? Several trains were operated over that road in that three day span, isn't that true?

A. Yes.

820 Q. You don't know who were on those crews, or what they did when they went through Watseka, do you?

A. No.

Mr. Knoblock: That's all.

*Redirect Examination by Mr. Elliott.*

Q. Was one of these cars loaded?

A. Yes.

Q. Were any of the pins or knuckles taken from that car?

A. One.

Q. What was in the car?

A. Beans; soy beans.

Q. Was it loaded ready to be shipped?

A. Yes.

Q. Now, do you know where it was consigned to?

A. To Decatur, Illinois.

Q. What were in the other two cars?

A. They were empty.

Q. Do you know whether they were consigned to any point?

A. Just billed back home.

Q. That would be to Peoria?

A. To their own railroad; billed to Peoria, and then on to their own railroad.

Q. Were they foreign cars?

A. Yes.

Q. Do you remember what cars they were as to initials?

A. The empty ones?

Q. Yes.

A. One was a U. T. L. X. tank car, and the other one was R. D. G.

821 Q. What does "R. D. G." stand for? Do you know?

A. No.

Q. You say you went to work on the 29th there at Chatsworth?

A. 30th.

Q. Had you been working for the company prior to that time?

A. Yes.

Q. Where?

A. Watseka.

Q. What was the occasion of your going to Chatsworth on the 30th?

A. To report for work there.

Q. Do you know what the previous agent had done? Where he had gone?

A. He was going in the army.

Q. Going into the army?

A. Yes.

Q. And you relieved this man at Chatsworth who had been inducted into the army?

A. Yes.

Q. You were a clerk at Watseka previous to that time?

A. Yes, sir.

Q. For this railroad?

A. Yes.

Q. T. P. & W.?

A. Yes.

Mr. Elliott: That's all.

*Recross Examination by Mr. Knoblock.*

Q. Mr. Seth, the T. P. & W. Railroad don't own any grain cars, do they?

822 A. I don't know.

Mr. Knoblock: All right! That's all.

Mr. Elliott: That's all.

WILLIAM O. JOHNSON, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. William Johnson; William O. Johnson.

Q. Where do you live?

A. Gilman.

Q. What is your age?

A. Sixty-two.

Q. What is your business or occupation?

A. Section foreman.

Q. How long have you been section foreman for the plaintiff?

A. Oh, in '33, I guess.

Q. That is when you started?

A. As foreman; yes.

Q. And continued down to the present time?

A. Yes, sir.

Q. What is your part of track that you take care of?

A. Well, it is from two and a half miles east of Gilman to half a mile west of Piper City.

Q. Does that include LaHogue, Illinois? The station at LaHogue?

823 A. Yes, sir.

Q. Do you recall when this strike occurred?

A. Why, it's the 29th, wasn't it?

Q. 29th of December?

A. I think so.

Q. Prior to that time, had you ever observed any damage to switches or switch lights on your division?

A. No, not before that time.

Q. After that, did you observe any?

A. Yes, sir.

Q. What did you observe?

A. Well, a couple of switches unlocked, and a couple of switch lamps broken up.

Q. Where were they located?

A. East switch at LaHogue; east switches in LaHogue; both of them.

Q. Where were the switches with reference to the hard road, Route 24?

A. Oh, they were— That 24 don't go through LaHogue. It's about a mile north of it.

Q. Well, is there any road near there?

A. Yes, sir.

Q. How far from the road?

A. The road is probably ninety or a hundred rods west of them switches.

Q. Now, when did you discover the condition that you have described in these two switches?

A. December 31.

Q. What time of day?

A. About 9 o'clock.

824 Q. In the morning.

A. Yes, sir.

Q. Were you over the switches the day before?

A. Yes, sir.

Q. Over the tracks, and observed the switches?

A. Yes, sir.

Q. Were they or not in good condition the day before?

A. Yes, sir.

Q. Just what was broken on those switches?

A. There wasn't anything broken on the switches; just locks unlocked and thrown away.

Q. The locks were gone?

A. Yes.

Q. What about the lights?

A. They were broken up.

Q. All of them?

A. Both of them, one for each switch.

Q. All four lens in each switch?

A. Yes, all four, and one lamp was broken up.

Q. What do you mean?

A. The frame. It was all broken up.

Q. What about the target of the switch?

A. They were all right.

Q. Did you observe the condition of the switch as to whether it was open or closed?

A. One of them was half open.

Q. Half open?

A. The switch on the passing track.

825 Q. Which way does that point?

A. It points to the east.

Q. Now, were these switches on the main line?

A. Yes, sir.

Q. Do you know from your own observation as to whether or not this portion of the track that you supervise is a fast or slow track?

A. Well, it's a pretty speedy track.

Q. It's the fastest section on the road, isn't it?

A. I guess it is.

Q. How fast do the trains travel through that section?

A. I couldn't tell you. I don't know exactly. I have no way of knowing.

Q. Do you know what effect it would have on a train to strike these switches that were half open?

A. If it was westbound, it would go on the ground, couldn't help it. If they were eastbound, they might get through.

Q. Did you examine G. N. car number 31258?

A. Yes, sir.

Q. Where was that car?

A. At LaHogue elevator, north elevator.

Q. What did you observe with reference to the car?

A. Well, a couple of pins, knuckle pins, gone.

Q. Did you look for them?

A. No, I never looked for them at that time. In fact, I never did look for them.

Q. Could you couple that car with the train in the condition you found them in?

A. No, it couldn't be done.

Q. How far is LaHogue from Chatsworth?

826 A. LaHogue from Chatsworth? About ten and a half miles.

Q. How far is it from Crescent City?

A. About the same distance. No, it's further; probably about fourteen miles.

Q. How far is it from Sheldon?

A. Thirty-two or -three miles.

Q. How far is it from Watseka?

A. It's further than that from Sheldon. It is about thirty-two or -three miles from Watseka.

Q. Did you observe anything with reference to tracks near the place where you found this car, G. N. 31258?

A. Did I do which?

(Question read by reporter.)

A. Yes, sir.

Q. What did you observe?

A. There was— There had been a car stopped west of the elevator, grain office, and the tracks went to the cars. It went to this grain car, and then on to the coal car, but the coal car was evidently tight, and they never got them out.

Mr. Knoblock: I object.

The Court: Yes. Tell where the tracks were.

A. They come from this car up to the cars, then it comes across the three tracks to the south side of the railroad, and I suppose they got in the car there. That is the last of them.

Q. That is as far as you found the tracks?

A. Yes, at that place.

Q. Did you see any other tracks?

A. Yes. There is a dirt road that runs along by them.



switches, and tracks from the dirt road over to the switches.

827 Q. What kind of tracks?

A. Man tracks.

Q. Were these tracks in the snow?

A. Yes.

Mr. Heyl: That's all.

The Court: Cross examine!

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Johnson, you say that you have been section foreman on this road since about 1933?

A. Yes, sir.

Q. You say that from 1933 up to December 29, 1941, you never found a switch lamp broken?

A. Oh, yes, I have found them broken before that, yes.

Q. Now, on December 29, 1941, is the date you say this strike occurred. Isn't it a fact that all trainmen have switch lock keys?

A. Supposed to, yes.

Q. And, furthermore, whenever a switch light is broken, under the rules that requires the engineer to stop his train, doesn't it?

A. Yes, sir.

Q. And if the rules were obeyed when the switch light was out, the engineer would stop his train and no accident would be possible?

Mr. Heyl: I object to that as speculation.

The Court: I think he may answer. Wait a minute! I don't see— Objection sustained.

Q. Now, you say you found the condition of these switches you have referred to at 9 A. M. the morning 828 of December 31,— Is that right?

A. Right around 9 A. M. sometime.

Q. You have no idea who was there during the night?

A. No, sir, I do not.

Q. You absolutely have no knowledge of who may have been around there?

A. No, sir.

Q. And you have no knowledge that any of the striking employees of the T. P. & W. were around there?

A. No, sir.

Q. What was that car number? Will you give me that

car number you say the knuckles and pins were missing from?

A. That was G. N. 31— I don't remember the other numbers.

Q. You never looked for the knuckles and pins down there?

A. No, never looked for them.

Q. When did you find those missing?

A. Right after dinner.

Q. That was in the afternoon of December 31?

A. Yes, sir.

Q. And you don't know who was around there that morning or during the noon hour, do you?

A. No.

Q. They might have been taken— If anything was done, it may have been done during the noon hour? During broad daylight?

A. No, it wasn't.

Q. How do you know?

A. Because the tracks were half covered with snow, and it didn't snow that morning.

Q. These tracks you speak of, you say they went 829 over to a car on the hard road, is that right?

A. I suppose that's right.

Q. You just suppose that? You didn't see where the car was parked?

A. I seen where the car was.

Q. Which side of the road was it parked on?

A. On the north.

Q. Was it on the pavement?

A. Well, the pavement stops right there at the elevator; about two wheels on there.

Q. The tracks you saw leading into that car, as far as you know, may have had nothing to do with reference to the condition you found with reference to the knuckles and pins?

A. Well, I think it did.

Q. But you don't know it, do you?

A. I couldn't swear to it, but it was there to show for itself.

Q. That is just your guess, isn't it?

A. Yes.

Q. The same thing is true about the dirt tracks, isn't that right? The tracks from the dirt road?

A. Yes, come from the road to the switches.

Q. That's just your guess? That the men making those tracks had something to do with those switches?

Mr. Elliott: I object.

The Court: I think it will be sustained.

Mr. Heyl: If he wants him to guess,—

The Court: Objection sustained.

Q. Did you have an employee working for you not so long ago who left a switch open that resulted in an accident?

A. No.

830 Q. Or did result in his discharge?

A. No. Oh, that's a long time ago.

Q. You had one, didn't you?

A. No, he wasn't working for me.

Q. You know about the incident?

A. Yes.

Mr. Heyl: If it is hearsay, I move to strike it.

A. He wasn't working for me, and I don't know.

Mr. Heyl: I move to strike it under those circumstances.

The Court: Oh, I think it may stand if he heard about it.

Mr. Knoblock: I think that's all.

*Redirect Examination by Mr. Heyl.*

Q. When you found lights broken on switches before, you didn't find them all broken?

A. No, just one lens, a kid threw a rock through them, or something.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

831 EDWARD F. SNYDER, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Edward F. Snyder.

Q. Where do you live?

A. 119 Wyoming.

Q. Peoria, Illinois?

A. Righto!

Q. What is your business or occupation?

A. Newspaper photographer.

Q. For what newspaper?

A. Peoria Journal-Transcript.

Q. How long have you been the photographer for this paper?

A. About four years.

Q. I will ask you if you took a picture of a scene near the Toledo, Peoria & Western Railroad premises on or about December 28 or 29, 1941?

A. May I see the picture?

Q. Yes, sir (handing same to witness).

A. I recall taking this, yes, sir.

Q. And that is the one that's marked "Plaintiff's Exhibit 1"? You took that, did you?

A. I did.

Q. When did you take it?

A. Oh, I would say it was about 8:45 to about 9 o'clock in the morning.

832 Q. What did you use for a camera? What kind of camera?

A. A Speed Graphic.

Q. Was that camera in good condition?

A. Apparently, at that time.

Q. Did you operate it yourself?

A. I did.

Q. What experience have you had in taking photographs?

A. Four years behind practically the same kind of camera on newspaper work.

Q. How many photographs do you take each year, on the average?

A. I don't know, don't count them.

Q. Are you able, from that experience, to take an accurate photograph of the object you are seeking to take?

A. What do you mean by "accurate"?

Q. Do you know what the word means? Correct?

A. The camera take the picture. All I do is operate the shutter. The lens reproduces the image.

Q. From that operation do you get an accurate reproduction of what the human eye observes in looking at the same object?

A. I think so.

Q. Is that true of this photograph, Plaintiff's Exhibit 1?

A. I don't see any discrepancy in it.

Q. Then is that a true and accurate reproduction of what you saw there by the human eye on the day that you took this photograph, and at the time the photograph was taken?

A. I think so.

Q. How was this film developed?

A. Why, it's enveloped seven minutes in D. K. 72 at 65°.

Q. Is that the usual and customary way of developing?

833 A. That's right. It's a standard procedure.

Q. Was that followed in making this picture?

A. It was.

Q. Was this an enlargement? In other words, was your original exposure the size of this photograph?

A. Why, I don't remember. Our picture was taken on a 4 x 5, and we enlarge whatever portion we care to for newspaper work.

Q. Was that enlargement done according to the usual and customary method?

A. It was.

Q. Was it true and accurate?

A. I think it would be.

Q. And was there any exaggeration of the objects by reason of enlargement?

A. No; no.

Q. Or any change from the original film?

A. No, we don't use any retouching at all.

Q. Were there any retouchings on this photograph?

A. None.

Q. Now, was the developing and enlarging under your supervision and direction?

A. No, it wasn't. All I do is take the photograph, and we turn in the holder at the newspaper, and somebody else does the finishing for us.

Q. Do you know, from the examination of this exhibit, that is an accurate and true representation of the film you turned in?

A. It is a standard procedure at all places.

Q. Is this true and correct?

A. I would say it is, yes.

834 Mr. Heyl: We offer in evidence this photograph with the testimony of the former witness.

The Court: Cross-examine!

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Snyder, do you recall what day you took that photograph?

A. I don't recall the exact date.

Q. One of the last days in December? Around New Year's? In other words, it was after the strike started?

A. That's right.

Q. You went over, and the man sitting on the bench with the club on his shoulder—I am referring to this gentleman sitting down with a club over his shoulder—you asked him to pose there, didn't you?

A. I don't recall any of the details.

Q. Do you remember when he sat down one of the men said, "Put your club on your shoulder like Alley Oop"?

A. I don't recall.

Q. You recall Alley Oop is one of the comic strips in the newspapers?

A. Yes, I do.

Mr. Knoblock: That's all.

Mr. Heyl: I offer this.

The Court: Any objection? It may be admitted.

(Note: Plaintiff's Exhibit 1.)

Trial Recessed at 12 o'clock noon.

835 Trial resumed at 2 o'clock P. M.

Mr. Knoblock: I would like to ask the last witness one or two more questions.

EDWARD F. SNYDER, recalled, having been previously sworn, testified as follows, in answer to further

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Snyder, you are the same Edward Snyder that testified this morning in behalf of the plaintiff, is that right?

A. That's right.

Q. I want to ask you if, at any time when you were over there taking these photographs, or at any other time, you ever saw any acts of violence or threats of any kind or character?

A. I never did.

Mr. Knoblock: That's all.

The Court: Any further examination?

Mr. Heyl: That's all.



836 JAMES W. BARBEE, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. James W. Barbee.

Q. Where do you live?

A. 1510 Bigelow, Peoria.

Q. What is your business or occupation?

A. Commercial photographer.

Q. How long have you been a commercial photographer?

A. Fifteen years.

Q. And what do you mean by "commercial photography"?

A. It concerns the taking and making of commercial pictures, such as scenes of accidents, catalog illustrations, scenes of buildings, and so forth.

Q. And how many years' experience have you had in taking and developing pictures?

A. Fifteen years at least.

Q. And does that include the taking as well as the developing?

A. It does.

Q. I will ask you if, at my request, you took some pictures on January 13, 1942, in the morning along the road leading from Allied Mills south or west along the hard road?

A. I did.

Q. And who was present when these pictures were taken?

A. Mr. Payne of the T. P. & W., and I can't recall the other man.

Q. Mr. Kipling?

837 A. Mr. Kipling, that's right.

Q. And how did you take these pictures? In what manner were they taken?

A. Well, in the usual manner that any photograph is taken. The camera, the standard camera, with twelve and sixteen inch lens.

Q. How far was the lens above the pavement?

A. Various distances; around approximately five feet, two inches.

Q. Now, I will ask you to look at the photograph which is marked for identification "Plaintiff's Exhibit 3", and state if that is one that was taken, and where you took that.

A. That is the first photograph that I made, which was taken just off the edge of the hard road near, or almost opposite, the gate of the Allied Mills.

Q. And the camera was facing in what direction?

A. The camera was facing approximately east.

Q. And what else is there about that photograph? Did you make any measurements there?

A. Mr. Payne made the measurements.

Q. In your presence?

A. Yes, sir.

Q. What were the measurements there?

A. The camera was facing easterly fifty-two feet, four inches, west of the switch stand at the west end of track 61 near the Allied Mills entrance, lens five feet, three inches, high above the pavement:

Q. How wide is the pavement at that point, if you know?

A. Forty-two feet.

Q. Did you make any other measurements there?

838 A. The far curb to the nearest rail was twenty-six feet, and the far curb to the switch stand was nineteen feet, top of the highway shoulder to the switch stand was fifteen feet, and the width of the highway shoulder was four feet.

Q. At that point?

A. At that point.

Q. I will ask you to look at the photograph marked "Plaintiff's Exhibit 4", and state where that was taken.

A. That was taken from the bank (I would call it a "bank" or seemingly a dike) nearest the river from the hard road that is across the railroad tracks onto this upper ridge or dike road, I would call it.

Q. How many feet west of the center of the track was your camera placed?

A. The camera was facing westerly twenty-two feet, ten inches, east of the center line of the track.

Q. East of the line?

A. East of the center line of the track, yes; east of Elm Grove Tavern.

Q. Now, did you measure the width of that bank from the railroad?

A. The lens was five feet above the rail.

Q. Above the bank that's shown in the photograph?

A. That's approximately the same height as the one I took the picture from.

Q. The lens was how far above the rail?

A. Eleven feet.

Q. Above this rail shown in this photograph?

A. That's right.

Q. I show you the photograph marked "Plaintiff's Exhibit 5", and ask you to state when and where that was taken.

A. That was taken in a westerly or southern direction from the point that the other photograph was taken.

Q. Have you got the memorandum of it?

A. The camera was facing northwesterly twenty-one feet, ten inches, east of the center line of the track, one hundred and thirty-five feet south of the south end of the guard rail shown. The lens was nine feet above the rail.

Q. That is the guard rail that is shown on the pavement, and ends at the last telegraph pole?

A. Yes.

Q. That is what you mean by that?

A. The highway guard rail.

Q. Not the railroad, but the highway?

A. The highway guard rail, yes, sir.

Q. Now, I show you the photograph marked "Plaintiff's Exhibit 6", and will you tell me where your camera was placed to take that view?

A. The camera was taken facing northerly in the center of the track, facing northerly in the center of the track eighty-five feet south of the south end of the guard rail (that is the highway guard rail shown). The lens was five feet, one inch, above the ground.

Q. That was taken from the bank, was it not?

A. Yes, sir, from, I would call it, the shoulder between the hard road and the dip into the track.

Q. The tall building that is shown to the left beyond the automobiles that appear on the hard road, what is that building?

A. That's the Allied Mills.

840 Q. That is where, the point where, the first picture was taken?

A. Yes, sir.

Q. Now, I show you Plaintiff's Exhibit 7, and state if that is a photograph that you made.

A. That photograph was made with the camera facing northerly thirty-nine feet, four inches, west of the center line of the track, one hundred and fifteen feet south of the south end of the guard rail, the highway guard rail shown.

Mr. Knoblock: How far south of the guard rail shown did you say?

A. One hundred and fifteen feet.

Mr. Knoblock: South of the guard rail shown?

A. Of the end post of that highway guard rail, and the lens was five feet, two inches, above the ground.

Q. And these photographs were all taken today, were they not?

A. Taken by me today, yes, sir.

Q. Did you develop them?

A. I developed the films, made the prints, and delivered them in person.

Q. Were these photographs correctly and accurately taken, and were the films correctly and accurately developed?

A. Yes, sir.

Q. Are these photographs true and correct?

A. They are.

Q. And do they correctly show what they purport to show?

A. They do.

Q. Who was with you when you took these photographs?

A. Mr. Payne and—

Q. Mr. Kipling?

841 A. —Mr. Kipling.

Q. And they directed you as to the things that were desired to be shown in the photographs with reference to location, is that correct?

A. Yes, sir.

Mr. Heyl: We offer in evidence the photographs identified by the witness, and marked "PLAINTIFF'S EXHIBITS 3" to "7", inclusive.

The Court: You may cross examine.

If I may interfere with you just a moment this morning, there was one exhibit offered, that of a bullet, and I permitted you to cross examine, and did not pass on whether it should be admitted. Is there any objection to the admission?

Mr. Knoblock: Yes, there is.

The Court: What is the objection?

Mr. Knoblock: The objection is there is no evidence showing it was the type of bullet actually used by these guards here. He says he distributed them to them. Whether they used other bullets is not shown, and we object to its materiality, don't know what the purpose of it is.

The Court: I wonder myself what the purpose is, but it does seem to me each of these guards testified that the guns and the ammunition were given to them by this witness who testified, and this witness testified, testified this was the only kind of bullet furnished in this locality.

Mr. Heyl: That's right.

842 The Court: If I am correct about that—

I don't at this time see any great materiality in evidence, but, other than that, it seems, if I am correct in my remembrance of the testimony, it did show that was the only kind they were furnished, and they said the ammunition received was from him. For that reason, your objection will be overruled, and it may be admitted.

(Note: Plaintiff's Exhibit 2.)

Mr. Knoblock: We have no objection to the foundation for the pictures, excepting as to the materiality.

The Court: You don't care to cross examine?

You think they are not material? Let's see.

Mr. Knoblock: We don't feel that they involve the area in dispute.

Mr. Heyl: I will have to connect that up by another witness. This witness wouldn't know, of course, but I will say to Your Honor that I will say that the stoning of the train and the throwing of the bottles containing benzine took place at the places shown in these photographs.

The Court: All these photographs—

Mr. Heyl: Relate to that one scene.

The Court: —relate to that scene?

Mr. Heyl: Except the first photograph, which relates to the switch at Allied Mills, which has been referred to by various witness, and has been referred to frequently in cross examination. I will connect it up.

The Court: Your offer has been made, and I will  
843 pass on it later.

Mr. Heyl: No further question about the foundation?

The Court: No, I so understand.

JOHN L. UMSHLER, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Elliott.*

Q. What is your name?

A. John L. Umshler.

Q. Have you been subpoenaed, Mr. Umshler?

A. Yes, sir.

Q. What is your business?

A. Superintendent of the P. & P. U.

Q. That is the Peoria and Pekin Union Railway Company?

A. Yes, sir.

Q. Are you familiar with the location of the connection between the Peoria & Pekin yard in East Peoria and the T. P. & W.?

A. Yes, sir.

Q. Do you, in the course of business with the T. P. & W., have cars to deliver from the Peoria and Pekin Union to the T. P. & W.?

A. Yes, sir.

Q. And the T. P. & W. to your company?

A. Yes, sir.

Q. On the 29th of December last I will ask you whether or not you had cars from the Peoria and Pekin Union 844 to be delivered to the T. P. & W.?

A. I did.

Q. Do you recall the character of those cars, as to whether they were loaded or empty?

A. No, I don't, Mr. Elliott.

Q. Did you give instructions to have those delivered to the T. P. & W.?

A. Yes, sir.

Q. I will ask you if you know what, if anything, occurred with reference to the delivery of those cars?

A. I was notified the evening of the 29th about 11:30 P. M. that the cut had shoved back into our East Peoria yard, and our cut was stopped at Herschel Street.

Q. Did you make an investigation of that yourself?

A. No, sir.

Q. Where is Herschel Street with reference to the Peoria and Pekin Union yard?



A. It's between Washington Street at East Peoria and Farm Creek bridge, East Peoria.

Q. And Farm Creek is the bridge that leads over to the T. P. & W. tracks, does it not?

A. Yes, sir.

Q. About what time in the evening of Monday, the 29th, did that occur?

A. About 11:30 P. M.

Q. Were those cars delivered?

A. No, sir.

Q. Why?

A. Unable to deliver them. They shoved them 845 back in to keep from—avoiding—any trouble.

Mr. Knoblock: I object unless he knows of his own knowledge.

The Court: Sustained.

Q. Did you make an investigation to determine why they were not delivered?

A. No, sir, only that there was men around Herschel Street.

Mr. Knoblock: Furthermore, my objection is based on hearsay.

The Court: Sustained.

Q. Did you make an attempt to deliver those cars on the following day?

A. Yes, sir.

Q. About what time of the day?

A. About 2 or 2:30 in the afternoon.

Q. What occurred at that time?

A. Nothing. We delivered the cars.

Q. Were these cars that should have been delivered the night before?

A. Practically.

Q. From that time on did you have any trouble in delivering the cars to the T. P. & W.?

A. Not on that date, no, sir.

Q. Did you on a later date?

A. On Wednesday, yes, sir, Wednesday afternoon, the following day.

Q. That would be December 31?

A. Yes, sir.

Q. About what time in the day was that?

A. About 2:30 P. M.

Q. What occurred then?

846 A. Our cut was stopped at Herschel Street, and was shoved back into the yard.

Q. Into the P. & P. U. yards?

A. Yes, sir.

Q. And were you able to make the delivery at that time?

A. About 3 P. M. I went to East Peoria and rode the cut to the T. P. & W. yards, to the end of the double track on the T. P. & W.

Q. And what did you notice in the vicinity of Herschel Street when you got over there?

A. Nothing at Herschel Street.

Q. Did you notice any of the pickets as you made that delivery?

A. No, sir, only at the end of the double track; yes, sir.

Q. At the end of the double track? Was that on T. P. & W. tracks?

A. Yes, sir.

Q. How many pickets did you see there?

A. I would say about fifteen, twenty.

Q. And where did you leave those cars?

A. In the T. P. & W. yard.

Q. What did those pickets do when you arrived at the end of the double track?

A. I got off and talked to them.

Q. What, if anything, did they say?

Mr. Knoblock: Wait a minute. Unless you tell who—

The Court: Can you confine it to anybody there?

Q. Who were these pickets? Were they former employees of the T. P. & W. on strike?

A. I couldn't say that.

Q. What did any of them say?

Mr. Knoblock: Wait a minute. I object.

847 The Court: Do you know any of them?

A. No, sir, only by sight, but not by name.

The Court: Did any of them say they were pickets at the time?

A. No, some of them said they used to work for the T. P. & W.

Q. Some of them did say that?

A. Yes, sir.

Q. What, if anything, was said by them, or in their presence?

Mr. Knoblock: We object. There is no way possible for us to refute such testimony.

The Court: I think I will let him answer. I want to be

lenient—not too lenient, of course. It isn't before a jury. Many of these things you couldn't hear before a jury, and you attorneys are in position to pick out matters that are improper at the conclusion. I can't tell what he is going to say.

I will permit you, at the conclusion of his testimony, to make any objection, or consider any brief or argument that may be submitted.

I think, in view of the fact it isn't before a jury, you may answer. What did you say to them, and they say to you?

A. All I said to them was, "Boys, I am looking for Newdigate about the picketing of Herschel Street. Herschel Street, to my estimation, shouldn't be picketed"—which is before we hit the T. P. & W. tracks—and that I had nothing to do with the T. P. & W.

848 Q. What did they say in reply to that?

A. About that time Newdigate arrived and introduced me to Mr. Coyle and Keiser, and I asked them about picketing Herschel Street. I believe Mr. Keiser was the one that said they wouldn't picket Herschel Street.

Q. That they would not?

A. Would not picket Herschel Street.

Q. Is that Mr. Keiser who is sitting here?

A. Yes, sir.

Q. And Mr. Coyle sitting right back of Mr. Keiser?

A. Yes, sir.

Q. What further was said, if anything?

A. About that time our engine came back, and I asked Mr. Newdigate if he would see that she got back home safe, and he said he would.

Q. Did you have any other trouble there any other time making deliveries after that?

A. That was on Wednesday afternoon?

Q. Yes.

A. We didn't make an attempt. Wednesday afternoon I called Mr. Best and told him of the conversation, and then the next day, New Year's day, we decided we wouldn't make an attempt to go on the 1st.

Q. Why not?

Mr. Knoblock: I object to that.

The Court: Yes, objection sustained.

Q. Did you make an attempt to deliver on Friday, the 2nd?

A. No, sir.

Q. Did you have any cars for delivery on the 2nd?

A. Yes, sir.

849 Q. Was there any reason why you did not deliver on the 2nd?

Mr. Knoblock: I object to that.

The Court: He may answer.

A. Friday morning I called General Chairman Weideman of the Enginemen and General Chairman Ford of the Brotherhood of Railway Trainmen, who represent the men on the Peoria and Pekin Union, and asked them if they couldn't—

Mr. Knoblock: I object to what he asked them.

The Court: Yes, objection sustained.

Mr. Elliott: This connects with the same organization, however.

The Court: Objection sustained.

Q. Did you have any talk with either Coyle or Keiser on that day?

A. In the afternoon, yes, sir.

Q. Tell us what talk you had with Mr. Coyle or Keiser on the afternoon of the 2nd.

A. Mr. Coyle wasn't present.

Q. Was Mr. Keiser present?

A. Mr. Keiser, Weideman and Mr. Ford.

Q. Who is Mr. Ford?

A. General chairman of the Brotherhood of Railway Trainmen.

Q. On your road?

A. Yes, sir.

Q. Who is Mr. Weideman?

A. General chairman of the Enginemen.

Q. On your road?

A. Yes, sir.

Q. What conversation did you have with Mr. Keiser in the presence of Mr. Ford and Mr. Weideman?

850 A. I was asked by the joint committee for a meeting at 2 P. M. regarding a delivery of cars to the T. P. & W., and I met the joint committee and Mr. Keiser in my office, and the committee was talking about an element of danger of their men on account of some shooting that morning, which I knew nothing of.

Q. Yes?

A. And I asked Mr. Keiser and the joint committeemen if they thought there was an element of danger that their men might get hurt. They said they couldn't speak for

other than their own men that they represented, and Mr. Keiser represented, and I told the committee, if they felt that, to give me a letter in writing, which they returned the letter about 3:30 P. M.

Q. Have you that letter with you?

A. No, sir.

Q. Can you tell us the substance of that letter?

A. It was referring to our meeting this P. M. and feeling that there was an element of danger to the men that they represent, and therefore they should not be asked, our men should not be asked, to go to the T. P.

& W.

Q. What time on Friday was that delivered to you?

A. About 3:30.

Q. 3:30?

A. 3:30, 3:45.

Q. Was there any delivery made that day, then?

A. No, sir.

Q. Was there any delivery made on Saturday morning?

A. No, sir.

Q. Was there an attempt to make a delivery on Saturday?

Mr. Knoblock: What date?

851 Mr. Heyl: Saturday morning, January 3.

Q. Did you make any attempt to deliver that morning?

A. No, sir.

Q. Did you have cars for the T. P. & W. at that time in your yards?

A. Yes, sir.

Q. And those cars were not delivered at the usual time?

A. No, sir.

Q. Following the granting of the temporary restraining order in this case, did you have any trouble in making delivery to the T. P. & W.?

A. No, sir.

Q. Has there been any trouble since the granting of the restraining order on the afternoon of January 3?

A. Well, the crews have stopped at the picket lines, but no trouble whatsoever.

Q. Have your crews gone on through and made deliveries?

A. Yes, sir.

Mr. Elliott: That's all.

Mr. Knoblock: There is no cross-examination.

852 EARL MARTS, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Elliott.*

Q. You may state your name.

A. Earl Marts.

Mr. Knoblock: How do you spell that last name?

A. M-a-r-t-s.

Q. Where do you live, Mr. Marts?

A. 720 East Corrington.

Q. What is your business?

A. Yardmaster for the Burlington Railroad.

Q. Here in Peoria?

A. Yes, sir.

Q. Were you subpoenaed in this case?

A. I was.

Q. As yardmaster on the Burlington, what, if anything, do you have to do with reference to the delivery of cars to connecting roads?

A. I have the entire supervision of that.

Q. Do you, in the ordinary course of business, make delivery of cars to the T. P. & W. from the Burlington?

A. We do.

Q. And the T. P. & W. to the Burlington?

A. Yes, sir.

Q. Is there a reciprocal arrangement whereby your crew takes cars over and bring cars? That brings them back with them?

A. We have a limited reciprocal arrangement.

853 Q. And they do likewise with you?

A. Right.

Q. Up to and including December 29, 1941, did you have any trouble in making delivery of cars to the T. P. & W.?

A. We did not.

Q. Were any car delivered on December 30 or 31 or January 1, 2 or 3?

A. We attempted delivery on January 2.

Q. What kind of cars did you have to deliver at that time?

A. You mean what they consisted of?

Q. Yes.



A. Mostly coal; three or four other loads of various commodities.

Q. Where were the cars containing coal consigned to?

A. The majority of them to the Central Illinois Light Company.

Q. Is that located on T. P. & W. tracks?

A. It is.

Q. And is the only road that has connections with the private track of the Light Company, isn't it?

A. Yes, sir.

Q. How many cars did you have for delivery on January 2?

A. I believe it was eighteen.

Q. Did any of those cars contain interstate freight?

A. They did.

Q. Now, tell us what occurred when you—on January 2 about 3 P. M. with reference to delivery of these cars.

A. I had on my own authority withheld the transfer for a couple of days, due to the fact of the trouble that we heard was in progress, and the inability of myself to contact my superior officers, but on January 2 I was 854 instructed by my superior officer to attempt to make the delivery, with the provision that it must be made during the daylight hours, and it was—I was charged with the duty to see that no one was injured, if possible.

Q. Go ahead!

A. I put an engine on the transfer after our special agent had conferred with the chief of police of Peoria and the chief of police of East Peoria, as to being afforded protection, and he was assured that the move would be protected. Then we started for the T. P. & W. yards.

Q. Where did you start from?

A. What was known as the old house track, part of our yards.

Q. Part of your yard?

A. Yes, Burlington yard.

Q. Go ahead!

A. And we met with no interference until we reached Main Street, I believe it is, in East Peoria.

Q. Is that the street that comes across the bridge from the street where the City Hall is located?

A. Yes.

Q. Known as Caterpillar Trail?

A. Yes, that's the place.

Q. Go ahead, now!

A. At that point we encountered, I should say, twenty men, twenty to twenty-five men, a picket line, across the tracks,—

Q. Yes?

A. —carrying banners indicating that a strike was in progress. We stopped, and the special agent and 855 myself went forward and conferred with the men.

They informed us, of course, that the condition existed, and to take the cars back to our yard.

Q. These men that were on the picket line?

A. Yes.

Q. Did you recognize any of them?

A. Two or three of them by sight. I don't know very many of the men by name, but I know a good many of the men working on the railroad by sight.

Q. Were they men that had been working for the T. P. & W.?

A. Yes. The spokesman, the man that identified himself as a spokesman, was a yardman, switchman.

Q. Do you know what his name was?

A. I do not, and I told the boys that I thought they were making a mistake in stopping us.

Q. By the "boys", you mean the men you were talking to?

Mr. Knoblock: I object. No one is identified here.

The Court: I think, if he stated he was a yardman and carried a banner, we could presume it was these boys that were on a strike. I think he may answer. What was said?

A. Some of the yardmen, I will put it that way, one or two of the men that I knew were employees, or former employees, informed us that we couldn't pass and, inasmuch as I had a report to make to my superior officers,—

Mr. Knoblock: I object to this.

The Court: Yes. State what was said.

A. I called the spokesman of the party to one side, and the chief of police of East Peoria police department, and told them I wanted a definite statement to take back 856 to my superior officers. I asked the spokesman, "You refuse to let us pass?" He said, "We do." I asked the chief of police, "You refuse to grant us protection?" He said, "I do because I haven't men enough." I informed the men to cut the engine off, and we returned to our yards with the transfer.

Q. And did not make the delivery?

A. We did not, not at that time.

Q. Can you identify—Could you, if you saw the man you talked to, could you identify him?

A. I could.

Q. You may look back on the left side of the aisle, and see if you can identify him—or the men standing back of the table.

A. (This gentleman in the rear there (indicating).)

Mr. Elliott: Mr. Newdigate, will you please stand up? Mr. Newdigate? (Person named rises.)

Q. Is that the gentleman?

A. That is the gentleman that told me I couldn't go by.

Q. Is that the gentleman?

A. That is the gentleman that identified himself as spokesman for the party.

Q. What did you do with those cars when—

A. We returned them to our yard.

Q. How long did they remain in your yard?

A. Until—That was Friday. Until Sunday.

Q. Did you make any attempt to deliver them on Saturday?

A. We did not.

Q. How many of those cars were for the Central Illinois Light Company?

A. I couldn't say definitely, but I should guess about ten.

857 Q. They contained coal?

A. They did.

Q. And that coal was for the supply of the Central Illinois Light Company, wasn't it?

A. It was.

Q. When were you able to make the delivery of those cars?

A. Sunday afternoon, January 4.

Q. That was after the restraining order had been entered?

A. It was.

Q. Was there interference with the taking of those cars at that time?

A. None whatever.

Q. If you saw a list of cars that were in that cut, could you identify them?

A. Well, I don't know that I could. I have a list of them in my office.

Q. You didn't bring that list with you?

A. No, I did not.

Q. Some of them were interstate cars, however?

A. There was three of them interstate cars.

Mr. Elliott: That's all.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Marts, how long have you been employed by the Burlington?

A. It will be forty years this next June.

Q. You say on January 2 you tried to make a delivery of coal and some other cars to the T. P. & W. about 3 P. M. is that right?

A. We did.

858 Q. And that you conferred, or your special agent conferred, with the chief of police of Peoria and East Peoria, and you were assured protection?

A. I did not. He did.

Q. I say your special agent did?

A. He did.

Q. Then that afternoon of the 2nd you proceeded to attempt to make a delivery?

A. We did.

Q. And did you—Had you heard at that time of the shooting that had occurred on that morning?

A. We had.

Q. Then, when you got to this picket line you have designated as Main Street in East Peoria, the man that you have identified as Mr. Newdigate discussed this thing with you there?

A. Yes, sir.

Q. And you asked him for a definite statement with reference to whether you could pass or not pass, did you?

A. I did.

Q. Did you instruct him you had to report to your superiors?

A. Yes, sir.

Q. Isn't it a fact Mr. Newdigate said this to you, or this in substance: "Mr. Marts, you know what happened this morning. I can not say for the rest of these men. I

can only speak for myself, and there may be danger for you or some of your men." Is that about what he said to you?

A. In substance, yes.

Q. He indicated he could only speak for himself?

A. Right.

859 Q. And it was on that basis that you turned around and took your cars back to the yards?

A. It was. There was no evidence—

Q. Of force?

A. —of any animosity against our crew.

Q. That's right.

A. These men, now, being railroad men, could appreciate the fact or assume we were acting on instructions from our superior officers.

Q. There was no show or threat of violence toward your crew in any way?

A. There was not. On the contrary,—

Q. They were friendly?

A. We could pass the picket line with our light engine, and return to the other end of the string of cars.

Mr. Knoblock: That's all.

*Redirect Examination by Mr. Elliott.*

Q. Mr. Newdigate told you they refused to let you take the cars back?

A. No.

Mr. Knoblock: Wait a minute!

A. They advised us to take them back, in fact.

Q. But they refused to let you go through the picket line with the cars?

A. They did, with the inference that somebody might possibly get hurt.

Q. And the chief of police was there at the time?

860 A. He was.

Q. And he told you he couldn't afford you protection because he didn't have men?

A. He did not say "afford". He says, "I can not protect you because I haven't men enough." My instructions were "no violence" from my superior officers.

Q. After having the talk with Mr. Newdigate and the chief of police, you returned to Peoria rather than to have any chance of violence?

A. Immediately.

Q. Also, by reason of the fact you refused violence, you didn't go on through?

A. Naturally.

Mr. Knoblock: I object.

The Court: He has answered.

Q. As you took this cut of cars over there, was your engine on the front end pulling them?

A. It was.

Q. And where was the cut stopped with reference to this picket line?

A. Just before reaching it; in other words, just before reaching Main Street.

Q. And then that is where you had the talk?

A. That's right.

Q. And after you had been informed that you couldn't have protection from the chief of police, and you had this talk with Mr. Newdigate, your engine was cut off the easterly end of the cut and run back on an adjoining track and hooked onto the other end?

A. Right.

861 Q. So that the cars themselves never went across the picket line, did they?

A. They did not.

Q. And they told you you couldn't take the cars, but you could take your light engine?

A. They did.

Mr. Elliott: That's all.

*Recross Examination by Mr. Knoblock.*

Q. Mr. Newdigate at that time told you he was only speaking for himself, and not the rest of the men?

A. Right.

Mr. Knoblock: That's all.

The Court: Just one question:

Did you fear violence or not want to go through without the consent of these men that were on the strike? What was it?

A. Both, Your Honor.

The Court: Both?

A. Yes. We felt that—As I mentioned, there was probably twenty or twenty-five men in the line, many of whom I did not know. I had no way of knowing whether or not



they were T. P. & W. employees, strikers or not, and, inasmuch as we were informed that there might be violence should we attempt to run the picket line, I had to assume that there would be an attempt to injure someone or damage the equipment. By whom I could not say, of course.

The Court: That's all.

Mr. Elliott: That's all.

862 JOHN H. HEILMAN, recalled, having been previously sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. J. H. Heilman.

Q. You are the same J. H. Heilman who testified before in this case?

A. Yes, sir.

Q. And you are—What position do you hold?

A. Chief train dispatcher and yardmaster, T. P. & W.

Q. And on January 2, 1942, you were following that line of employment?

A. January 2 I was acting as engine foreman in connection with the other duties.

Q. Now, on that date did you have something to do with three cars of bottles and two empty cars that were to be delivered to the C. R. I. & P.?

A. That's right.

Q. What did you have to do with those?

A. Well, at that time the customary practice was to leave those cars on the C. B. & Q. old house track. That was more or less of an agreement between the C. B. & Q. Railroad and the T. P. & W., and those cars were placed at that point on the C. B. & Q. old house track.

Q. All right! What happened on January 2, 1942? Were those cars delivered by the C. B. & Q. to Hiram Walker's?

A. No, sir.

863 Q. What happened? Why?

A. Well, the cars were left at that point.

Q. What is it?

A. They were left there on the C. B. & Q. old house—

Q. To be picked up by the Rock Island?

A. Yes, sir.

Q. Were they picked up by the Rock Island?

A. No, sir.

Q. Do you know why they were not picked up?

A. The reason they were not picked up is because Mr. Kelly of the Rock Island told me—

Mr. Knoblock: I object to this.

The Court: Who is Mr. Kelly of the Rock Island?

A. Yardmaster.

Mr. Knoblock: I don't see how it could be binding on us.

The Court: I think he may answer. What did he tell you?

A. Mr. Kelly of the Rock Island told me in a conference I had with him he wouldn't be able to pick the cars up from the C. B. & Q. old house track because his employees would not do that work any more.

The Court: That may be stricken.

Q. Do you know when those cars were delivered on that track for the Rock Island?

A. They were delivered, as near as I am able to state, January 11.

Q. I mean when were they delivered before January 2?

When were they put there for the Rock Island?

864 A. Approximately 4:45 P. M.

Q. On what date?

A. That would be January 2, I believe. No, wait a minute. December 31.

Q. Were those the cars that were in the train that was stopped over at Swords' Siding?

A. That's right.

Q. That you testified about the other day?

A. They were.

Q. Those two cars?

A. Yes.

Q. Do you know when those cars were actually delivered to the Hiram Walker & Company plant?

A. Well, I don't know exactly, no, sir.

Q. Were they delivered on January 2?

A. I can not answer the question. I am not certain.

Q. Do you keep track of cars that are interchanged between your railroad and other railroads?

A. I have a working knowledge of that, but I do not keep the book record.

Q. Have you prepared, or caused to be prepared, a memorandum showing all of the cars on the T. P. & W.

moving on the days beginning December 28, 1941, to the date of the restraining order in this case?

A. I haven't prepared any record. I have been handed a certain record that has to do with certain cars and certain trains.

Q. Have you checked that record?

A. Not closely.

Mr. Heyl: We will have to call another witness on this.

865 NORMAN H SHEPLER, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Elliott.*

Q. Mr. Shepler, you may state your name.

A. Norman H. Shepler.

Q. Where do you live, Mr. Shepler?

A. 214 East Maywood.

Q. What is your business?

A. Chief clerk, freight accounts.

Q. Of the T. P. & W.?

A. Yes, sir.

Q. How long have you been that?

A. Twenty-four years.

Q. As chief clerk, what, in a general way, are your duties?

A. Accounting for all cars we handle.

Q. And, in connection with that, do you have the way bills of cars that are handled?

A. Well, I found them, but I guess you have them over there.

Q. Do those way bills come to you?

A. Yes, sir.

Q. I will ask you to look at the paper which I will now hand you, and which will be marked "Plaintiff's Exhibit 8", and state whether or not that is a list of the cars that were handled by the T. P. & W. on December 29, together with the way bills, or copies of way bills, which came into your possession as chief clerk.

A. That is the way bills that the operating department 866 ment requested me to furnish.

Q. Operating department?

A. Yes.

Q. Are those the original way bills that were furnished by the operating department to your department?

A. We furnished the operating department.

Q. You furnished the operating department?

A. Yes, sir.

Q. Are those true and correct way bills of the various cars that are mentioned?

A. Yes.

Q. You may tell from what points to what points those various cars moved, that is, in what way is it indicated on the list.

A. From Chatsworth to Shreveport, Louisiana; Effner, Indiana, to Keokuk, Iowa.

Q. Does the statement show the point of origin and the point of destination?

A. Yes, sir, in all cases.

Q. And those are headed "Origin" and "Destination"?

A. Yes, sir.

Q. And the other columns are the car number and the way bill number?

A. Commodities and the date of original shipment.

Q. Is that a correct statement of cars that were so handled?

A. Yes, sir.

The Court: Does that show the date you received them?

A. No, but we do have junction stamps on the way bills that shows the day where we received the car from the connections.

The Court: That is part of the exhibit?

867 A. Yes, sir, with the exception of cars that are forwarded originating on our line, because we just have a copy of the origin of that car.

Q. Would that show the date of the delivery to the connecting line?

A. No, sir.

Q. It does not?

A. No. Our junction report would furnish that.

Q. Your junction report would furnish that, but the information that is shown upon the way bills, together with the date of receipt and movement, is correct, is it not?

A. Yes, sir.

Mr. Elliott: I offer, in connection with the testimony of the witness, PLAINTIFF'S EXHIBIT 8.

The Court: Is that all with this witness?

Mr. Elliott: No, I have several other exhibits.

The Court: We will take a recess for about ten minutes, and you can mark them.

(Recess.)

Mr. Heyl: We have a lady here, Your Honor, I would like to use. It is a little out of order.

The Court: All right. Call her.

Mr. Heyl: Can this witness remain here? It is nothing he is on.

The Court: Yes.

868 FRANCES REEVES, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Frances Reeves. Mrs. John Reeves, or Frances Reeves.

Mr. Knoblock: R-e-a-v-a-s?

A. No, R-e-e-v-e-s.

Q. Where do you live?

A. At 1944 Washington Road in East Peoria.

Q. What is your husband's name?

A. John Reeves.

Q. And where is he?

A. He is home sick in bed.

Q. And is he unable, because of that illness, to appear here in court today?

A. Yes, he is.

Q. Under a doctor's care?

A. Yes, he is.

Q. How long have you lived at that point?

A. We've lived there about three months.

Q. And where is your house located with reference to the lane that leads from Route 24 to the property of the Toledo, Peoria & Western Railroad?

A. Well, our land joins right next to that road.

Q. How much land do you occupy there? How much property?

A. There's two acres.

Q. Two acres?

A. Two acres.

869 Q. On the west side of that road, is it?

A. That's right.

Q. That is, your property is?

A. Yes.

Q. Where is your house located with reference to the intersection of that lane and this hard road?

A. Well, our house is on the west side of that.

Mr. Knoblock: I couldn't hear that.

A. The west side of those two acres.

Q. That is where your house is located?

A. That's right.

Q. Is there another private lane or lanes to the west of your house leading from your house down toward the railroad tracks?

A. Yes, there is, right next to our house, west side.

Q. How close is that to your house?

A. Well, just a few feet between them.

Q. When you enter your home with your car, which road do you use to get to your home?

A. We use this private road.

Q. The one to the west—

A. Yes.

Q. —of your house?

A. Yes.

Q. Where is your garage located with reference to the front of your house?

A. It's directly back of the house.

Q. That would be east toward the railroad? Whatever direction that is?

A. Whatever direction that is.

870 Q. Did you have any conversation with the strikers? Former employees of the T. P. & W.?

A. They came to our place Sunday morning, and asked if they might have permission to get on our place.

Q. That was Sunday morning, December 28, 1941?

A. That's right.

Q. Who was present at that time?

A. Well, I was the only one at home.

Q. Do you know the men that called to see you?

A. No, I don't.

Q. Did you give them permission to occupy your premises?

A. No, I wouldn't give them permission.

Q. A little louder.



A. I wouldn't give them permission without my husband being there.

Q. And you and your husband are tenants on that property?

A. That's right.

Q. Who is the owner of the property?

A. Mr. Reutter or Mrs. Reutter.

Q. Reutter?

A. Reutter.

Q. Later did they return to see you?

A. Yes, they came several times before my husband got home.

Q. On that same day?

A. That same day.

Q. What did they say in your presence to your husband when he did return?

A. They wanted on this property, and he wouldn't give them permission without seeing Mr. Reutter first and talk with him.

Q. Did they return later after seeing Mr. Reutter?

871 A. He was supposed to see Mr. Reutter Sunday evening, but we had company come in and couldn't see him, and before he got to see them Monday morning they had already been to Mr. Reutter and gotten permission.

Q. Did you ever give them permission for them to occupy the premises you had under lease?

A. No, we didn't.

Q. Following that, after Monday morning, what did they do on that property?

A. Monday morning they came back, one of the fellows came back, and told me they had permission to be on our land. Naturally, I didn't do anything about it because there was nothing for me to do, and so then Wednesday was the time that I saw them start going through our yard. On the slip they were not supposed to be on our place at all.

Q. They exhibited some slip of paper to you?

A. Yes, from Mr. Reutter, that they were not to bother our place at all, and it was Wednesday evening toward dusk that I went on my back porch and saw them come running through our yard with clubs, and one of them had a lantern and, naturally, I stepped to the porch and watched them, and they went after a car that had gone down this private lane.

Q. How far did they follow that car down this private lane?

A. They were way back of our garage on down there.

Q. Are there any houses at the other end of the private lane?

A. Yes, there are a lot of people who live there.

Q. What happened after that?

A. My mother-in-law went to go outside, and I asked her not to go because they were there. I was afraid they might do something.

872 Mr. Knoblock: I object.

The Court: Yes, objection sustained.

Tell what happened.

Q. What did she do?

A. She went outside, and I stood there and watched her to see that nothing happened to her.

Q. How many men did you see running that evening toward this car that was going down the private lane?

A. There were six or eight of them.

Q. Where did they start from that you observed?

A. They were in our garden when I first saw them, and then I watched them go clear through to the road, cater-cornered.

Q. Where is your garden with reference to the place where they were on the picket line?

A. Well, it's between our house and where they have their shack.

Q. Did they put a shack up on your premises?

A. Yes, they did.

Q. Did you ever give them permission to do that?

A. No.

Q. Is that the corner of the lane on your property right by the hard road?

A. Where they are?

Q. Where the shack is.

A. On our land, yes.

Q. Did you observe those men later on during the day at various times?

A. Yes. After that we started watching them. They were following cars.

Q. What did you see them do when cars come in 873 and started down to the T. P. & W. yards?

A. They were after them. They ran after them.

Q. Did they have anything in their hands?

A. Yes, they had clubs in their hands.

The Court: What?

A. Clubs.

Q. Will you describe the clubs?

A. Well, you mean in length?

Q. Yes.

A. They were about that long, I imagine (measuring with hands).

Q. That would be about two feet and a half long?

A. Yes, I would say about that.

Q. How thick were they?

A. I would say two or three inches thick.

Q. How many men have you observed at a time doing that following cars with clubs in their hands?

A. There were usually six or eight of them.

Q. How many days did you observe that in the lane and near where they had this shanty?

A. Well, all evening I watched them because my husband was coming home from work.

Q. Tell what you observed with reference to your husband.

A. When I heard him coming in, I always turn on the light, the porch light, and, as I heard him, I turned on the light, and there were about six fellows running down there behind him.

Q. Where did they come from?

A. They came from the west side of our house. When they saw him go into the garage, they just slowed up and came on back up the road, and he came in the house.

874 Q. Where did they go from there? After he turned in the garage, where they go?

A. They went back up the road.

Q. Before they saw him turn in the garage, what did they do?

A. They were running after him, running after the car.

Q. What did they have in their hands?

A. They had clubs. One of them carried the light.

Q. About how many of them?

A. Six.

Q. Do you remember what night that was?

A. New Year's Eve.

Q. Wednesday night?

A. Yes.

Q. Did you observe them following that day up until the time this injunction was issued in this case?

A. That was the day I was mostly interested in there because of our place. I was just a bit worried about it.

Q. Did you see them after that doing that same thing?

A. Yes.

Q. Until what date did they continue to do that?

A. I don't know what day it was. I hadn't paid much attention to it. All of a sudden they stopped, I knew that.

Q. It continued until they stopped suddenly, is that it?

A. That's right.

Q. Now, when these men chased your husband or his car,—

Mr. Knoblock: I object to that, "chased her husband".

The Court: She said they followed his car.

Q. —or followed him, where did they go after they discontinued that chase?

875 A. They went back up to the hard road.

Q. What do you mean, "up to the hard road"? You mean the picket line there?

A. I didn't pay any attention to them after he came in. I just saw them go up toward the hard road, and then I never bothered.

Q. What did they have in this shanty that was on your property at the intersection of the road and this lane?

A. I have never been in it.

Q. Did you see them around there frequently?

A. Yes. They usually have a fire there, I know that.

Q. You have noticed that from the smoke?

A. Yes, that's it.

Q. And before this strike started did you ever see men congregate at that place with clubs in their hands?

A. No, I hadn't.

Mr. Heyl: That's all.

The Court: Cross examine!

*Cross-Examination by Mr. Knoblock.*

Q. Who owns this property, Mrs. Reeves?

A. Reutters.

Q. And are you aware of the fact that some of these striking employees paid Mr. Reutter a sum of money for a lease where that shanty is situated down—during the duration of this strike?

A. Yes, I know they did.

Q. And you understand that Mr. Reutter took that money?

A. Yes, I do.

Q. And that lane that you speak about is the regular lane down to the place where that shanty is now located, isn't it?

A. I don't understand.

Mr. Knoblock: Read it.

(Question read by reporter.)

A. No, that isn't it.

Q. What is that?

A. That isn't it at all. The shack is on one end toward the T. P. & W. lane, right next to it, and our house is over on the other side, the west side of the road.

Q. Do you know that since this strike started that Mr. McNear has offered Mrs. Reutter \$5,000.00 for that property upon which the shack is now located?

Mr. Heyl: I object to that.

The Court: Sustained. You don't need to go into this lease, Mr. Knoblock. I am not going to consider this lease at all. I don't see why I should try this matter between this woman and another at all. I am going to say, wherever the shack was located, they had a right to be.

Mr. Heyl: Providing these people gave their consent.

The Court: I am not going to try a lease.

Mr. Knoblock: We have no further cross-examination.

Mr. Heyl: We are not interested in the lease.

The Court: We have enough to try without trying a lease.

877 NORMAN H. SHEPLER, having been previously sworn, resumed the stand, and testified further as follows, in answer to

*Direct Examination (Resumed) by Mr. Elliott.*

Q. When you were on the stand a few moments ago, Mr. Shepler, you identified Plaintiff's Exhibit 8 as being the list of the cars in the train on December 29, 1941,—

A. Yes, sir.

Q. —with the way bills and so forth?

A. Yes, sir.

Q. You may look at Plaintiff's Exhibit 9, which shows a list of cars on December 29, 1941, P. & P. U. delivery, together with the way bills. Is that a correct statement?

A. As requested by the operating department.

Q. And furnished by you?

A. That's right.

Q. And look at Plaintiff's Exhibit 10, train of December 30, 1941. Is that the consist of the cars, together with the way bills?

A. Yes, sir.

Q. And that was furnished by you from your records?

A. That's right.

Q. Look at Plaintiff's Exhibit 11, which is a train of December 31, 1941, and state if that is a correct statement and correct way bills covering those cars as indicated.

A. Yes, sir.

Q. Look at Plaintiff's Exhibit 12, train of December 31, 1941, a list of cars and way bills. Is that correct?

A. Yes, sir.

Q. And Plaintiff's Exhibit 13, train of December 31, 1941, list of cars and way bills attached. Does that show the same information that you explained with reference to Exhibit 8—

A. That's right.

Q. —on those particular trains? Look at Plaintiff's Exhibit 14, January 1, 1942, list of cars in train and way bills.

A. Yes, sir.

Q. And Plaintiff's Exhibit 15. Is that a correct statement as to the cars as indicated there, and the way bills?

A. Yes, sir.

Q. And those way bills are the originals or copies in your operating department?

A. That's right.

Q. And look at Exhibit 16, and state whether or not that is a correct statement of the items as indicated thereon.

A. Yes, sir.

Q. And the way bills also?

A. That's right.

Q. You may look at Plaintiff's Exhibit 17.

A. Yes, sir.

Q. You may look at Plaintiff's Exhibit 18, and state whether or not that is a recapitulation of the cars as indicated in Plaintiff's Exhibits 8 to 17, inclusive.

A. Yes, sir.

Q. And is it a correct statement?

A. That's right.

Mr. Elliott: I offer in evidence PLAINTIFF'S EXHIBITS 8 to 18, inclusive.



The Court: Cross examine!

Q. These statements show whether the cars are interstate or otherwise, do they not?

A. The way bills are attached. That is the evidence.

Q. What interstate cars—the way bills attached to the various exhibits show that?

A. Yes, sir.

The Court: Is that the only purpose of the offer?

Mr. Elliott: Yes.

The Court: Any objection?

Mr. Knoblock: Objection.

The Court: What is the objection?

Mr. Knoblock: I think they are immaterial, irrelevant, not proving anything here.

The Court: I think the only purpose is to show whether or not the company was engaged in interstate transportation.

Mr. Knoblock: I think this unnecessarily burdens the record.

Mr. Heyl: There is another purpose.

The Court: What is the purpose?

Mr. Heyl: The purpose is to show the interstate freight in each of these trains.

The Court: I think they may be admitted if that is the purpose, to show that they were.

Anything else with this witness?

880 ADOLPH RINCK, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to.

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Adolph Rinck.

Q. How do you spell your name?

A. R-i-n-c-k.

Q. How old are you?

A. Forty-three years.

Q. Where do you live?

A. On 409 Brons Avenue, Peoria.

Q. And how long have you worked for the T. P. & W.?

A. Six years.

Q. What is your occupation there? What work do you do?

A. Chauffeur.

Q. What do you drive?

A. I drive the L. C. L. truck.

Q. What is the L. C. L. truck?

A. Less than car loads of freight.

Q. Where do you drive it?

A. I drive from Peoria to Fairbury, Illinois.

Q. Every day?

A. Every day but Sundays.

Q. And what do you haul in that truck?

A. Merchandise, interstate freights.

The Court: Interstate or intrastate?

A. Interstate.

881 Q. And on December 29, 1941, about 7:30 A. M., did you have this truck?

A. Yes, sir, had number 24 truck.

Q. Where were you going? Into the yard with it?

A. I was going into the freight house.

Q. Where do you keep the truck at night?

A. I keep it in the Washington Garage at Peoria.

Q. What happened when you arrived at the entrance to the driveway leading to the freight house?

A. I got to the driveway, and there was a picket line there, formed a line there, and I couldn't get in.

Q. Were they there the night before?

A. No, they weren't there the night before.

Q. How many?

A. About twelve to fifteen men there.

Q. All right?

A. They told me I couldn't go to the freight house. I said, "Why? I am a truck driver, have nothing to do with the trainmen." He said, "You handle a lot of freight."

Mr. Knoblock: Whom did he have this conversation with?

Mr. Heyl: I will identify him.

Q. Will you speak up louder, and make it more distinct?

A. I told them I delivered freight, that had nothing to do with the trainmen and, as far as the union I belonged to, had nothing to do with trainmen, and I could run.

Q. Are you a union man?

A. Yes, sir.

Q. Did you know these twelve or fifteen men you saw there?

A. I knew two of them, and the one that used to be a special agent. I don't know his name.

Q. Was he a former employee of the railroad?

A. Yes, I believe he was. I saw him when he was a special agent. I don't know his name, though.

Q. Do you know the names of the others?

A. One was Verd Kirk, and Overacker.

Q. And where were they at that time?

A. They were in the picket line.

Q. Where was the picket line?

A. Right at the gate at the entrance to the freight house.

Q. How many were there?

A. About twelve to fifteen men there.

Q. How were they standing with reference to the road?

A. They formed a line right in front of the gate.

Q. In the road?

A. Right across the driveway.

Q. What did they have in their hands?

A. They had picket signs in their hands.

Q. Anything else?

A. No, they didn't have anything else.

Q. Were they standing still or moving?

A. Standing still.

Q. Did you have a conversation with either of the men you knew, or the crowd in general?

A. The crowd. I just knew these fellows, and I talked to the crowd there.

Q. What did they say to you?

A. They told me not to go in. I said, "I have got to see what the boss tells me, whatever the boss tells me I have to do."

883 Mr. Knoblock: I think it has been gone over once.

The Court: Confine yourself to what the conversation was. What was said you haven't told us about?

A. I told them I was going to go into the yard and find out what's doing, whether they are going to send me out or not, and they agreed, and there was—it was all right for me to go through and I went to go—and I went in and called Mr. Hootman. It was shortly after 8. Mr. Hootman informed me—

Q. Who is Mr. Hootman?

A. He is the agent at the freight house.

Q. T. P. & W. freight house?

A. T. P. & W. freight house.

Q. What else?

A. He informed me that I should run. The truck was loaded Saturday night, the 27th.

The Court: What do you mean, "you should run"? Run the truck?

A. Run the truck, yes, sir. The truck was loaded the 27th of December.

Q. Saturday night?

A. Saturday night.

Q. Where was the truck at that time?

A. At the freight house, trailer number 26.

Q. You had part of that equipment with you, and were going to hook it on this load?

A. Hook it on to the trailer, yes.

Q. After you talked with Hoffman, what did you do?

A. I walked out to the picket line and told them the truck was loaded Saturday night, and I should get rid 884 of that load, dispose of that load, they should let me dispose of that load. They thought it was O. K. to do, but they told me not to bring the truck back that night. I made my trip. I went back and got my truck then, and went out the lane and nobody bothered me when I went out. I made my trip and nothing unusual happened along the line, and when I come back they told me— There was another fellow spokesman, Cody:

Q. Cody?

A. Switchman Cody is all I know him.

Q. Cole? They call him "Coley"?

A. They call him "Coley" is all I know.

Q. He is a switchman?

A. Switchman.

Q. What else?

A. He told me, "I thought you wasn't going to bring that truck back. The fellows told me this morning you weren't going to bring that truck back."

Mr. Knoblock: I object to what they told that morning.

The Court: It is a conversation between him and Cole. Go ahead!

A. "They told me this morning you weren't going to bring the truck back." I said, "I have to finish my day. I didn't say I wasn't going to bring the truck back. I have to finish my day." Nothing more happened, and I

went through. The next morning there was just a few fellows there. I didn't know any of them. When I come to work next morning, the 30th, there was just a few of them, and they tried to stop me again, and I explained what was what, that I had to run. "If the boss tells 885 me to run, I am going to run the truck." A couple said something, but I didn't argue. I went through anyway. I didn't talk to them any more. I hooked on my trailer and made my regular routine, and nothing happened. They didn't even bother me going out. That evening I come in again, just two or three fellows there, I never saw them before, and I had a load on, being late, and I never stopped and went straight through, and they never formed no line, and I disposed of my truck and went out again to put the truck in the garage, and nothing happened. They didn't bother me.

Q. Did you have any conversation with them that evening?

A. I stopped there and one fellow asked me about going through. I never paid no attention to him, just kept right on going.

Q. Did they say anything about how deep the hole was in Farm Creek?

Mr. Knoblock: I object to this.

A. That was Tuesday morning.

The Court: It is leading. Did they say anything about Farm Creek?

A. Yes, that was Tuesday morning. They said, "You know there is a deep hole over there", meaning Farm Creek.

Q. What was said with reference to overturning the truck, if anything was said of that kind?

Mr. Knoblock: I object to the leading—

The Court: He may answer. It is leading, but I don't know how he can refer to a particular part of the conversation if it happened. Did they say anything about it?

A. I don't know who is the fellow that says that.

886 The Court: What did he say?

A. Sir?

The Court: What did he say?

A. He said, "You know there is a deep hole", and I looked back to see who it was, and I didn't know who it was.

The Court: What about this turning over of the truck? Anybody say anything about that?

A. That was all that was said.

The Court: What was said?

A. About a deep hole in there.

The Court: About turning your truck over?

A. About that deep hole.

The Court: Is that about all the conversation?

A. About all the conversation.

The Court: That was against you, in any event?

A. Yes.

The Court: Go ahead!

A. Tuesday morning is when I went through. I don't know who said it, and I went through anyway. Wednesday morning there was nobody there when I went into the yard, there was no picket when I went in the yard, and when I went out there was two of them coming. They never bothered me, and I went straight through; and when I returned Wednesday there was nobody there.

Q. Then they discontinued that?

A. They discontinued it, yes, sir.

Mr. Heyl: I think that's all. You may cross examine.

887

*Cross-Examination by Mr. Knoblock.*

Q. Then, Mr. Rinck, there never was a time when you failed to go through the picket line?

A. Never was a time?

Q. Yes.

A. I was stopped the one time.

The Court: Answer his question. Was there ever a time you failed to go through the picket line?

A. On this occasion?

Q. You always went through it, as I got it.

A. I went through it, yeah.

Q. There was no harm done to you at any time?

A. No harm done to me, no, sir.

Mr. Knoblock: That's all.

The Court: Call the next witness.



888 WILLIAM GRAFELMAN, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. William A. Grafelman.

Q. What is your business?

A. General storekeeper.

Q. For whom?

A. The T. P. & W. Railroad.

Q. How long have you been employed by the T. P. & W.?

A. Since August, 1929.

Q. And how old are you?

A. Thirty-three.

Q. And you live in East Peoria?

A. Yes, sir.

Q. What place?

A. 124 Urbandale Avenue.

Q. What are the duties that you perform in your occupation?

A. Storage and ordering of all material for the maintenance of the railroad.

Q. Now, on December 29, 1941, did you have in your possession a truck or other vehicle that belonged to the railroad?

A. Yes, sir.

Mr. Knoblock: What was the date? December 29?

A. Yes, sir, I did.

Q. What kind of a vehicle was it?

A. It's a small stake body International, 1941 model.

889 Q. What did you do with that?

A. I was picking up material for the use of the railroad.

Q. Tell what happened.

A. I went— Right shortly after dinner I went over to the Illinois Furniture Company on South Adams Street and picked up some mattresses, and on the way back to the yard I stopped at the freight house to pick up some material they had there on hand for me. When I went to enter the yard, I was stopped by seven of the pickets.

Q. Who were they?

A. There was Clinton Stetler, O. W. Kirk, C. H. Kirk, J. J. Gimming and Newt Feldt.

Q. And where were these men?

A. They were standing right in the middle of the road, in the entrance where you go off of Washington Street to the freight house.

Q. Did they have anything in their hands?

A. Yes, there was two of them that had clubs.

Q. Do you know which two?

A. O. W. Kirk and J. J. Gimming.

Q. What kind of clubs did they have?

A. Well, O. W. Kirk had just a large club. That's all I can say for it, and I can't say just what kind of club it was Gimming had.

Q. Did you have any conversation with these men at that time?

A. Mr. Stetler came up to the side of the truck.

Q. Clinton Stetler?

A. Yes, sir.

Q. What did he say, and what did you say?

890 A. He asked me where I was going. I told him I was going up to the freight house to pick up some material, and after that he stopped and talked to the other men, and he came back and said if they let me go in, they might as well leave all other trucks go in.

Q. What else did they say?

A. I told him it was necessary that I get that material and, if necessary, I would have to go and get a special agent and come back and go in. Somewhere in the conversation (I couldn't say who said it), but the statement was made if I did they would upset the truck.

Q. One of these men you have just described, is that right?

A. That's right.

Q. What else happened?

A. Well, that was all that happened. I backed out of there, and went back to the yards.

Q. Did you get the material you started to get?

A. I did not.

Q. Were you prevented by these men?

Mr. Knoblock: I object.

The Court: Sustained.

Q. Did you have any other reason not to get the material?

A. No, sir.

Q. Now, on December 30, 1941, at 8:15. A. M., what occurred?

A. Well, I took another International truck belonging to the company, and I proceeded to the freight house. I picked up some material there that was delivered to various places around the city, and I was not stopped at any time that day.

Q. What?

891 A. I wasn't stopped at any time that day.

Q. Did you see any men there?

A. Yes, there were some men there. I couldn't really state how many there were or who was there at that time.

Q. Did they have anything in their hands?

A. As I was entering, there was one man picked up one of the "Strike" signs, a board with a "Strike" sign, and waved that at me was all.

Q. On January 2, 1942, did anything occur?

A. Yes. I came to work around 8 o'clock, and I got the small International truck and I went to the East Peoria Bakery, and picked up some bread there and went back to the yard.

Mr. Elliott: Picked up what?

A. Some bread, and on entering the yard I was stopped by a few of the men, and they said I couldn't come in with the material. I told them I had talked to the boys the night before, the pickets that were on duty there, and they had told me as long as I wasn't bothering the trains and was driving the truck I would not be stopped any more, it would be all right for me to continue, so after I got back to the yard I got two laborers from the repair truck, and we went over to O'Neill Bros. warehouse, and I picked up a cook stove and some mattresses we had purchased that was over at O'Neill's warehouse, and proceeded back to the yard. On entering the yard, I was again stopped by the men there at the gate, and was told that I couldn't come in with that material.

Q. Who were the men there?

A. There was Gerald Underwood and George Kneisley.

892 Q. Those two men were formerly employees of the T. P. & W. Railroad?

A. That's right.

Q. All right.

A. I was told to take this stuff back across the river, and have it delivered to the yard by caboose.

Q. Who told you that?

A. Mr. Kneisley.

Q. How many men were around there at that time with Kneisley and Underwood?

A. I can't rightfully say, but I believe there was one man besides Mr. Kneisley and Mr. Underwood.

Q. And where were they with reference to the entrance to the freight house?

A. This was at the entrance to the yard.

Q. To the yard?

A. Yes, sir.

Q. This is the lane that leads down to the building?

A. Yes.

Q. Have you told all about that incident?

A. Well, I left the yard then, and I went back down to Couri's fruit store.

Q. Where is that located?

A. On East Washington Street.

Q. East Peoria?

A. Yes, sir.

Q. All right.

A. And I called the master mechanic's office for further instructions.

893 Q. Did you see anyone there? Any of the strikers?

A. Yes. While I was there I was approached by Verd Kirk.

Q. Is he one of the defendants in this case?

A. He is one of the former employees.

Q. What did he say to you?

A. He told me he had overheard—I won't say he overheard—but a conversation had been overheard—my wife had on the telephone's and if she didn't discontinue criticising them they were going to get her.

Q. What did you say to him?

A. Really there wasn't much conversation to it. I can't remember now just what the conversation was after that.

Q. Is that all he said?

A. That's all.

Q. Did anything else occur that you know of?

A. No, the only thing that happened after that, Mr. Kipling came down and escorted me into the yard.

Q. That morning?

A. Yes, sir.

Q. That was to get the material in you had on your truck when they turned you back?

A. That's right.

Q. And you finally delivered that material with Mr. Kipling's aid?

A. Yes.

Q. Was there anything said to you by these men when Kirk told you not to go?

A. No, there wasn't.

Q. Now, you spoke of the lane. Is that the lane leading from the hard road down to the plant?

894 A. That's right.

Q. Did you travel that at any time?

A. Yes, I had been going in and out of there all the time ever since—

Q. Did anything occur while you were using that lane?

A. Did you mean to me?

Q. Did they do anything, any of these strikers, to you, or attempt to?

A. No, they didn't.

Q. Did you see them do anything with reference to any other person?

A. No, I can't say I saw anything happen outside of stopping the cars, and looking in to see who was in the cars.

Q. Did you see what these men had in their hands when they stopped the cars?

A. With the exception of the day I came with the stuff, one of the men did have a brake club in his hand.

Q. That is on the lane?

A. Yes.

Q. What is a brake club?

A. It is a club they use to set the brakes on the cars when spotting in the yard.

Q. How long and how thick?

A. The club is about an inch and a quarter in diameter, and thirty inches long.

Q. Made of hard wood?

A. Yes, sir, hickory.

Mr. Heyl: I think you may cross-examine.

895 *Cross-Examination by Mr. Knoblock.*

Q. On December 29 you say you went to the Illinois Furniture Company, and on the way there was some pickets lined up across the road, is that right?

A. No, they were in the entrance to our freight house.

Q. They were in the entrance to your freight house, and you say there was seven of them?

A. Yes, sir.

Q. The fact of the matter is, on that occasion there was only one man that talked to you, and that is John Stetler, isn't that right.

A. Yes.

Q. And Stetler walked up to your truck, and the rest of them stood back a ways?

A. There was one man standing beside of Stetler, and three men standing in front of the truck, and two standing on the right hand side of the truck.

Q. All Stetler told you at that time was they would appreciate it if you didn't take it in there?

A. They said—

Mr. Knoblock: I asked about a particular conversation.

The Court: Read the question.

(Question read by reporter.)

The Court: Is that all he said to you?

Mr. Heyl: That's assuming he said that.

I object for that reason.

The Court: He can answer "yes" or "no" whether that is all he said or not.

A. He didn't say that.

896. Q. The fact of the matter is,— You say two of them, O. W. Kirk and Gimming, had clubs in their hands?

A. That's right.

Q. They never waved them threateningly at you at that time, did they?

A. They did not.

Q. In fact, there wasn't any threat made to you of any kind at that time?

Mr. Heyl: Objected to as asking for a conclusion. If it is word of mouth, that is true, but a man standing in the road with a club in his hand is a threat.

The Court: That is a question of law. He is asking now whether by word of mouth or by the use of a club he threatened him.

Mr. Heyl: That is all right in that form.

The Court: Did they or not?

A. The threat was made if I returned they would turn over the truck.

Q. A day or two later when you returned, they didn't turn over your truck?



A. They did not.

Q. They didn't even try to turn it over, did they?

A. No, sir.

Q. John Stetler, was he the man said he would turn over your truck?

A. No, it was one of the other boys.

Q. Who was it?

A. I couldn't say. The remark was made, and I couldn't say who said it.

897 Q. You can't tell us so we can talk with the gentleman who made that kind of a threat?

A. No, I can not.

Q. On December 30, the following day, you were not stopped at any time?

A. No, sir.

Q. On January 1, 1942, at 8 A. M., when you returned from some bakery, you said you were stopped, and they told you you couldn't go in with your material, is that right?

A. That's right.

Q. Did you try to go in?

A. I told them what the boys told me the night before, that it would be satisfactory for me to go in at that time, and they would hold a meeting and decide what was to be done further.

Q. So you went right on in at that time?

A. Yes, sir.

Q. This place, at Couri's fruit store, you say you were approached there by Verd Kirk, is that right?

A. Yes, sir.

Q. Where is Couri's fruit store?

A. On West Washington Street. I couldn't give you the address.

Q. Was anybody else around there?

A. The two laborers I had with me were sitting in the truck.

Q. They were sitting in the truck, but they didn't hear what Verd Kirk said to you, and you said to him?

A. No.

Q. In fact, nobody heard that except you and Kirk, isn't that right?

A. That's right.

898 Q. You say that Kirk said if your wife didn't quit criticizing them they were going to get her?

A. That's right.

Q. Did he threaten to get you?

A. No, sir.

Q. Did he say he was going to do anything about you for that?

A. No, he didn't.

Q. In fact, nobody has ever contacted your wife with reference to what she said or didn't say, isn't that true?

A. That's true.

Mr. Knoblock: That's all.

899 KENNETH L. HARRIS, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Kenneth L. Harris.

Q. Where do you live, Mr. Harris?

A. Route 2, Washington.

Q. How old are you?

A. Thirty-one.

Q. What is your business or occupation?

A. Machinist.

Q. How long have you lived in Washington? Near Washington?

A. Around thirty months; two years and a half.

Q. Are you employed now by the T. P. & W.?

A. Yes, sir.

Q. When were you employed?

A. July 17, 1939.

Q. You have been with them since, have you?

A. Yes, sir.

Q. Where did you work before that?

A. C. B. & Q. at Hannibal.

Q. Have you always been in railroad work since you left school?

A. Yes, sir.

Q. What is the particular line of work you do for the T. P. & W.?

A. Well, general machine work on machines and the engine itself.

Q. Now, when you travel from your home to the T. P. & W. East Peoria yards, what road do you use?

900 A. That's highway 24.

Q. And you use the lane that leads from that to the yards?

A. Yes, sir.

Q. It has been described in this case?

A. I believe it has.

Q. That is the lane of the T. P. & W.?

A. Yes, sir. Yes, sir.

Q. Directing your attention to that place on December 31, 1941, did you have any difficulty in going to work from your home in using that lane?

A. Yes, sir.

Q. Tell the court what happened.

A. Well, the pavement was very slick that morning, and you couldn't drive very fast at all, and coming down to the lane there, when I started to turn in, there was a group of fellows there, I would say in the neighborhood of ten, maybe twelve. It was dark yet in the morning, and when I pulled through or pulled up to them and started on through there, they hollered for me to stop, and I stopped within about a car length of where they were at, but someone struck the back of the car in the left hand back corner near the rear window, and the left side and the right side window, or back window, they was pushed in until the molding was knocked loose on the inside, and there was a dent in the inside right underneath the outside, and scratched down across the turtle back.

Q. The turtle back?

A. Yes, or the trunk lid, whichever it would be called.

Q. How did they do this? How did they damage your car as you have indicated?

901 Q. It must have been a club.

Mr. Knoblock: I object to that.

The Court: If you know.

Q. Did you see them have anything?

A. They had sticks or clubs, pieces of approximately 1 x 4 made into paddles like. The bottoms were hewed off into a handle form.

Q. How long were these paddles? Boards shaped up into paddles?

A. Well, around three foot, I would say.

Q. How many had those instruments?

A. I couldn't say right offhand, but there were—there was several. I couldn't say exactly how many. I would say better than four.

Q. Did you attempt to stop your car when they told you to stop?

A. I was trying to slow up and stop, yes. I stopped within five feet of where the picket line was, or the group of fellows was.

Q. Was there any reason you couldn't stop before that?

A. It was slick.

Q. After this happened and they dented and mashed up your car, what did you do?

A. I got out and went back to see how much damage was done, and tried to talk it over with the fellows, but they didn't seem to want to talk about it at all. They went on to say the next time I didn't stop the car would be rolled over in the ditch, and everybody else that tried to go through without stopping. I had stopped the two evenings before going out. There hadn't been a word said about me stopping. I slowed up the two mornings before that,—that was Tuesday and Wednesday morning—and there wasn't a thing said about me coming to a complete stop, but the car—they walked right alongside of the car while I was coming through there and trying to stop.

Q. Both sides of the car?

A. Both sides of the car.

Q. Did you recognize the men in the group so that you could identify them?

A. I couldn't recognize any of them.

Q. Was it light or dark?

A. It was fairly dark. It was around 6:40 in the morning, something like that. I go to work at 7, and it was about twenty minutes before.

Q. Did you recognize them in any other way?

A. No, I couldn't recognize any of them.

Q. Were they at the picket line? Is that where they were stationed?

Mr. Knoblock: I object. If he can't recognize, how can he say whether it is a picket line?

Q. Where were these men with reference to the entrance to the lane from this road 24?

A. They was at the end of the lane, between the pavement and the fence line.

Q. And did you observe them there in day time other times?

A. Yes, they were there continuously.

Q. Were the men that bumped your car this time you

have indicated at the place you saw men on other occasions?

A. Yes, sir.

Q. Were they blocking the road in any way?

A. I couldn't say that they were blocking the road other than by standing in it. It wasn't any form of anything to stop traffic other than the men standing in the road.

903 Q. How did they stand there? That is what I want you to tell.

A. There was a line clear across.

Q. At the end of the lane?

A. At the end of the lane, yes, sir.

Q. Immediately adjoining this hard road?

A. Yes, sir.

Q. Was that the condition on the morning that they struck your car and injured it?

A. Yes, sir.

Q. How long did you see these men remain there? That is on the various trips in and out. How many times did you see them there after December 31?

A. They were there on Friday and Saturday, but not very many of them.

Q. Saturday morning?

A. Yes, sir. There was four there Friday morning, and three Saturday morning.

Q. Since that have there been any pickets there?

A. Not out on the road. Not out on the road.

Mr. Heyl: I guess that's all. You may cross-examine.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Harris, you say on the 29th and 30th of December of last year you went in and out of that lane there that leads to the roundhouse of the T. P. & W. to Route 24, and you went back and forth, and there was nothing said, and you were not stopped in any way?

904 A. Nothing, only coming out. I stopped each night coming out.

Q. Because of the "Stop" sign?

A. That's a highway.

Q. But no one stopped you or said anything to you those two days, is that right?

A. They hollered for me to stop or slow up.

Q. You didn't do it?

A. I slowed up, yes.

Q. You slowed up, but you kept on going?

A. That's right.

Q. Now, on this day, December 31, you don't know any one that was there that morning?

A. I didn't recognize a soul.

Q. And the T. P. & W. has a sort of watch house there where there are people on duty most all the time, too, don't they?

A. Yes.

Q. What side of the road is that situated on?

A. That's on the left hand side as you are going in the lane.

Q. After this thing occurred to your car, you say you got out of the car?

A. That's right.

Q. And you tried to talk to some of the men there?

A. Yes.

Q. And you still didn't recognize anybody?

A. No, sir.

Q. You couldn't tell us who was present there at that time?

A. I really couldn't.

Q. And at no time have you ever seen that lane blocked in any manner or form, other than a human being standing in it?

905 A. That's right.

Q. Did you notice a flood light there on that morning?

A. I believe there were a light there.

Q. How big a light was it?

A. I couldn't say as to that.

Q. Could you see any man as a result of the light given off by that flood light?

A. They were all in a group and back, to a certain extent, from where I was at.

Q. Did that flood light—Was it more or less pointed down the lane toward the T. P. & W., or did it light the road to the hard road?

A. It doesn't come to the hard road.

Q. The flood light doesn't light out to the hard road?

A. Not to my knowledge it doesn't.

Q. Now, you say—As I understood it, when you first took the witness stand, you had understood that this lane leading to this Route number 24 had been described in this case before. Did you understand that?



A. I didn't aim to state that I said that it had been described before. If I did, it was a mistake on my part.

Mr. Knoblock: All right! That's all.

906 RAYMOND PAUL AVERY, called on behalf of the plaintiff, and having been first duly sworn, testified as follows; in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Raymond Paul Avery.

Q. Where do you live?

A. I live at Washington, Illinois.

Q. And in the village or city?

A. In the City of Washington.

Q. And where do you work?

A. For the T. P. & W.

Q. What line of employment?

A. I am roadmaster.

Q. How long have you worked for the T. P. & W.?

A. Well, between eighteen and nineteen years.

Q. And were you employed December 31, 1911?

A. I was.

Q. And when you go to the T. P. & W. yards to begin your work, how do you reach the yards from your home?

A. Well, most of the time I go by my automobile if I am not going to ride out on the train.

Q. That is on Route 24?

A. Yes.

Q. Do you recall on the day I have indicated, December 31, you used the lane leading from the yards to this hard road?

A. Yes, I used it several times that day.

Q. Will you tell us what happened at any time?

907 A. Well, I wasn't molested any time until around, oh, I would say it might have been 3:20 or 3:30, somewhere along there, in the P. M., and I went to go out the lane with my car, and there was a car that blocked the lane. At that time there wasn't any special agents up there because they was called down to another place, and John Feuger come down to my car there, and he says, "I hear you have been firing an engine." I said, "No, I haven't been firing an engine." He said, "Well, don't lie

to me." I said, "I'm not." He said, "I want to warn you. You want to stay off of those engines and cabooses until this thing is settled. It will be too bad for yourself and your family", and right after he got done saying that Red Wilson, Hustler Wilson, and Dave White and McMullen come up there,—

Mr. Knoblock: Let me get those names.

The Court: Go ahead!

A. —and they started all talking at once. There was two or three others with them that I didn't know, at least I couldn't call their names afterwards, because I kind of got excited myself, and they started making threats. I can't remember all they said because they all talked at once.

Q. What did you hear them say? What was the substance?

A. Some of them said (I don't know who it was), "We are going to get rough." He said, "You know what happened down there a while ago to that switch engine." Then somebody says, "Stay off of them engines and cabooses."

Mr. Knoblock: Said what?

A. "Stay off of those engines and cabooses."

Q. What switch engine did they refer to, if you know?

A. They didn't say.

908 Q. Did you know what they were referring to?

A. Yes, I knew what they were referring to.

Q. What one was it?

Mr. Knoblock: I object.

Mr. Heyl: Let's understand one another.

The Court: The objection will be sustained unless this man saw the circumstances.

Q. Do you know what engine was tied up that afternoon before that?

A. No, I don't know the number of the engine.

Q. Do you know the incident?

A. Yes, it was down here by the river bridge.

Q. That was by Swords' Siding?

A. Yes, sir, right there at the derail.

Q. That had happened that afternoon?

A. Yes, sir.

Q. And prior to this time you had talked about it?

A. Yes.

Q. These three men you have mentioned, Wilson, White, McMullen and John Feuger you first mentioned, are all former employees of the T. P. & W., aren't they?

A. Yes.

Q. Were the other men that were with them that you haven't named, were they also former employees?

A. As I say, I don't know because they was all bunched together right in the window of my car.

Q. How many were there bunched together as you have indicated?

A. I wouldn't want to say any definite number because I don't know. I couldn't tell you that.

Q. Could you form an opinion?

909 A. I imagine there was six or seven.

Q. That is your best judgment, is it?

A. Yes.

Q. Were they all around your car?

A. No, they was just on one side.

Q. Did they have anything in their hands at that time, any of them?

A. I never saw anything in their hands.

Mr. Heyl: I guess that's all.

*Cross-Examination by Mr. Knoblock.*

Q. When you saw John Feuger there, he was there all by himself?

A. Down by my car at that time he was.

Q. That is what I am referring to. When you first saw him, he was there by himself?

A. Yes, because—

Q. He was there by himself?

A. He was down by my car by himself.

Q. He just asked you if you had been firing an engine, and you said, "No"?

A. Yes.

Q. And he said, "Don't lie to me"? Is that what he said?

A. Yes.

Q. And he said, "You had better stay off until it is settled"?

A. He said, "You had better stay off the engines and cabooses until this thing is settled."

Q. And then Wilson and White and McMullen come up, is that right?

A. They come up after he had told me he just wanted to warn me if I didn't stay off.

910 Q. Answer my question: Did Wilson, White and McMullen come up to where you were?

A. Yes.

Q. Did any of them at that time shake any club at you or their fists or anything else?

A. No, sir.

Q. Did they permit you to go on your way?

A. After—

Q. After they had talked to you?

A. That's right.

Q. Did they threaten any personal violence to you?

A. Only what I have mentioned is all.

Q. But, other than what you said here, they didn't lift their hands in any way to harm you, is that right?

A. No.

Q. They permitted you to leave in just a few minutes?

A. Yes, sir.

Q. Had you been running any engines over there?

A. No, sir.

Q. Then everything that they said with reference thereto didn't have any application to you, is that right?

A. No.

Q. What?

A. No.

Mr. Knoblock: All right!

The Court: Is that all? Call the next.

911 PHILIP OWEN, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Philip Owen.

Q. How old are you?

A. Thirty-seven.

Q. Where do you live?

A. 609 Commonwealth, Peoria.

Q. What is your business or occupation?

A. Roundhouse foreman.

Q. How long have you had that job?

A. Eight years.

Q. That is with the T. P. & W.?

A. Yes, sir.

Q. Are you familiar with the engines and understand them that are owned by this railroad?

A. Yes, sir.

Q. You handle them every day, do you?

A. Yes, sir.

Q. Now, do you know where the blow-off cock is located on the locomotives?

A. Yes, sir.

Q. Where is it located?

A. On what class of locomotive?

Q. On the 41, the one that was used on January 2, 1942.

A. On the 41 the blow-off cock is located on the 912 right front corner, and on the left side on the back corner.

Q. On both sides of the engine?

A. Yes, sir.

Q. Where is it located with reference to the ground? Is it near the ground, or is it high up on the locomotive? Can you tell us about that?

A. The pipe extends on the left side approximately two feet from the ground.

Q. On the right side?

A. On the right side it is on an even keel with the fire box mud ring. That would be about shoulder high.

Q. You use the lane leading to the company's round-house and yards in East Peoria, do you?

A. Yes, sir.

Q. Traveling from Peoria to your place of work?

A. Yes, sir.

Q. And on December 31, 1941, did you have any difficulty in going in that lane and proceeding to the round house?

A. When I turned in the lane,—

Q. What time of day was it, first?

A. It was about 6 o'clock.

Q. In the morning?

A. In the morning.

Q. All right!

A. When I turned in the lane, something struck the rear window of my car, breaking it out.

Q. All right! Where was that with reference to the entrance to the lane?

A. Just after the car had pulled in off of the high-913 way or hard road.

Q. Did you see anyone there?

A. There was a group of men standing around the entrance.

Q. What window did they break in your car?

A. The rear window.

Q. The rear window in your car?

A. Yes, sir.

Q. Did you stop?

A. It was icy, and the car went on down the little slope before I could stop it.

Q. Did you go back?

A. I did not.

Q. You got out, though, did you?

A. I opened the door and looked back, and I couldn't see anything.

Q. Did you see any of the men when you looked back?

A. No, sir.

Q. Where were they when this window was broken?

A. They were alongside of the car on both sides.

Q. And where were they with reference to the place the picket line was located over there on that lane?

A. They would be right along the hard road slab.

Q. Is that where they were?

A. Yes, sir.

Q. Did they say anything to you?

A. They called to me to halt when I turned in.

Q. Did you halt?

A. I couldn't halt on the ice. It was very icy.

Q. Then the back window was knocked out?

A. Something struck it, yes, sir.

914 Q. Did you have any further talk with these men?

A. No, sir.

Q. Now, on these blow-off cocks on the engine, the 41, are there separate valves for the two cocks?

A. Yes, sir.

Q. Where are they located? The valves located?

A. They are manually operated from the cab.

Q. Where are they located? Where are the valves located?

A. The valve is located out on the side of the mud ring, and operated by levers extending back in the cab.

Q. Which side of the cab?

A. On both sides. The left side operates the left, and the right operates the right.

Q. Can a man operate both of them at the same time?



A. One man can not.

Q. Because the levers are not close enough together, is that it?

A. The levers are on the outside wall of the cab.

Mr. Heyl: Cross-examine!

*Cross-Examination by Mr. Knoblock.*

Q. If there were nine men in the cab, two or three of them could operate both of them at the same time, couldn't they?

A. Only one man could operate one cock.

Q. I am not asking about one man. I said if there were two or three men working on each blow-off cock, they could both be operated at the same time, couldn't they?

A. Yes, sir.

Q. Now, on this occasion of December 31, 1941, you 915 said you made a turn to the right there to go down this lane, is that right?

A. Yes, sir.

Q. How far did you go down the lane before you stopped?

A. About three car lengths.

Q. About how many feet would that be?

A. I would judge thirty feet.

Q. Was it dark there? It was 6 A. M. in the morning, was it?

A. Yes.

Q. Was it dark there?

A. In the lane?

Q. Yes.

A. Yes.

Q. The fact of the matter is, it was still very dark, isn't that right?

A. I never noticed.

Q. You never noticed?

A. No.

Q. When you looked back, I will ask you if it was dark.

A. I could see cars passing on the highway. There was a car with a light on up across from the lane entrance.

Q. You saw a car with its lights on passing the lane entrance, but could you see the ground up to the highway?

A. Yes.

Q. Where did that light come from that you could see that?

A. I don't know.

Q. You don't know who was on this location that morning, do you?

A. No, sir.

Q. You don't know what hit your window, do you?

A. No, sir.

916 Q. And you don't know who did it?

A. No, sir.

Q. You are unable to tell us whether any of the men you noticed around there were former employees of the T. P. & W. or not?

A. That's right.

Mr. Knoblock: That's all.

J. P. McLAIN, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. J. P. McLain.

Q. Where do you live?

A. Colchester, Illinois.

Q. What county is that in?

A. In McDonough County.

Q. What is your age?

A. Fifty-seven.

Q. What is your business or occupation?

A. Retired farmer.

Q. Were you employed as a special agent on this railroad the last week of December, '41?

A. I was.

Q. Where were you stationed?

A. At the lane entrance to the yards; pavement.

917 Q. And on December 31, 1941, were you on duty there? That is the day before New Year's.

A. 31st? I was on duty there that night.

Q. At night?

A. Yes, sir.

Q. Where were you stationed there while you were on duty?

A. Well, there was a small shanty, house, right at the end of the lane, about thirty feet off the pavement, thirty or forty feet off the pavement.

Q. Is that in the lane, or where is it?

A. At the end of the lane on the east side.

Q. Was it in the lane or on the property beyond the lane?

A. I would say it was somewhat in the lane, and mostly on the property back there.

Q. That is the property of the road?

A. As I understand, it is.

Q. Were you there the night before, December 30?

A. I was there the 29th and 30th both.

Q. And what did you observe there as to the number of men that were picketing there?

A. Quite a few men.

Q. How many?

A. It's pretty hard to say exactly.

Q. Well, could you form any opinion as to the number?

A. Yes. I would say fifteen to twenty men.

Q. What were they doing there? We will take the first night. What were they doing?

A. Stopping all cars that drove up there from either side.

Q. You mean going into the property,—

918 A. And out.

Q. —and out of the property?

A. Yes, sir.

Q. Did they do anything else?

A. What do you mean? "Anything else"?

Q. Did they do anything else there, or just stop cars? Did they have anything else to do? That is the first night I am talking about.

A. That is the night of the 30th?

Q. Yes, sir.

A. Well, they stopped my car, and threatened to tip it over.

Q. Just what did they say to you?

A. I couldn't repeat the exact words they said to me.

Q. Were you going in or coming out?

A. I was coming in.

Q. What time of day was it?

A. Possibly 5:30.

Q. In the evening?

A. Yes, sir.

Q. What happened? Just tell the court in your own language what happened.

A. Well, they stopped me, a bunch of them got hold

of the side of the car, and raised it about two feet and a half off the ground, and a special agent named Thompson explained I was a special agent and not a train worker of any kind, and they let me go in.

Q. Did you know the men—

A. I did not.

Q. —that took hold of the car?

A. No, sir.

919 Q. Were they men on the picket line?

A. Yes, sir.

Q. Did anything happen after that? That is that same night.

A. I don't recall anything out of the ordinary that night.

Q. Did you park your car near there to go on duty?

A. No, I took the car down to the yards.

Q. And walked back?

A. Yes, sir.

Q. On December 30, between 9 and 10 o'clock, were you there?

A. I was.

Q. Did anything happen at that time?

A. I couldn't say as anything out of the ordinary—

Q. Either evening was there anything happened with reference to nails?

Mr. Knoblock: I object to this. He said nothing happened. That is very leading.

The Court: I think he may answer. He called his attention to it.

Mr. Heyl: That's all.

The Court: That isn't leading.

Anything happen regarding nails?

A. Yes.

The Court: Tell about it.

A. There was nails put under cars.

Q. What night was that?

A. That was the 30th.

Q. Just tell the court what you observed with reference to that transaction.

A. Well, that's about all there was to it.

920 Q. Tell who did it, and how it was done. You can't guess at it.

A. The pickets was the ones that did it. I wouldn't know them.

Q. Who were they? Where did they come from? From the corn fields, or where?

A. There was a bunch of pickets at the roadside the entire night.

Q. How many pickets were there?

A. Fifteen to twenty.

Q. What did you see them do?

A. Stop cars.

Q. What about the nails you mentioned a moment ago?

Mr. Knoblock: Objection.

The Court: What did you see them doing in regard to any nails, and who did it?

A. It would be impossible for me to say the guys because I don't know their names.

The Court: Do you know anything about nails?

A. I know there was nails put under cars.

The Court: Did you see anybody put them under there?

A. Yes, sir.

Q. Did you see anybody putting nails, and where were the nails put?

A. The car I remember distinctly belonged to Larry Howell.

Q. Who is he?

A. Special agent. They stopped his car and, while they was talking to him, a man stooped down and put them under the car.

Q. What kind of nails?

A. Roofing nails.

Q. Do you have any of them?

A. I have.

Q. Where did you get them?

921 A. Along the lane and in the shanty.

Q. After they had been put down in this manner, is that the way you got them?

A. After the snow went off, I picked them up, yes.

Q. If you have got them with you, let's see them.

A. (Witness complies.)

Q. Is this package here that contains some nails the nails that you picked up over there?

A. Yes, sir.

Q. In the lane?

A. Yes, sir.

Q. When did you pick them up?

A. I picked them up when the snow was off, about the 31st.

Mr. Heyl: Mark this package as an exhibit, will you (to reporter)?

Mr. Knoblock: I object to this. That indicates several days later, and it is not material.

The Court: Did you get a puncture out of it?

A. I got a puncture.

The Court: Did this other fellow get a puncture?

A. I don't know. I had a flat tire between here and Peoria.

Q. This carbon has been marked "Exhibit 19" containing these nails.

Did you see how they kept these nails, and what they took them out of?

A. They have been under my care.

Q. I mean the nails these men had when they put them out.

Did you see them take it out of anything?

A. It was night. I couldn't see where they were taken from.

Q. How did you pick up these nails that are contained in this carton marked "Exhibit 19"?

A. On the lane.

Q. Where?

A. Along the lane, with my hands.

Q. With your hands?

A. Yes, sir.

Q. Are these the same nails you saw them put out there?

A. Yes, sir.

Mr. Knoblock: Oh, I object to that.

Q. How many times?

The Court: I think the objection will be sustained to that. I don't know how he would know.

Q. How many times did you see them put nails out there on the road?

A. I seen them possibly two or three times. Those nails were put out on the night of the 29th.

Q. How do you know that?

A. How do I know it?

Q. Yes?

A. Because the Cars— We discovered them with the lights of the cars.

Q. You saw them by the cars after they were put out?

A. Yes, by the cars.

Q. About 9 o'clock?



A. Yes, sir.

Q. When did you pick them up?

A. The next day.

Q. At the same place? The same place where you saw them the night before?

A. We swept them out of the road that night.

923 Q. The next day you picked them up, is that it?

A. The next day, yes, sir.

Q. When did you sweep them out with reference to the time you saw them from the lights of the cars?

A. About 9, 9:10, somewhere in there.

Q. How many men were engaged in putting out these nails in front of cars at various times?

A. Well, I never seen but one man at a time putting out nails in front of cars.

Q. Do you know the name of this man?

A. I do not know.

Q. Will you tell us how you saw them put them out? What did you do when they put the nails out?

Mr. Knoblock: I object.

The Court: I think he may answer.

A. In the case where I seen them stoop to put nails under cars?

Q. Using their hands or feet?

A. (Witness illustrates.)

Q. What is it?

A. Bent over.

Q. And threw them under the wheel? Is that what you are trying to show there?

A. Yes, sir.

Mr. Heyl: We offer, in connection with the testimony of this witness, these nails, PLAINTIFF'S EXHIBIT 19.

Mr. Knoblock: We object.

The Court: I think they may be admitted.

Is that all with this witness?

924 Mr. Heyl: That is all.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. McLain, you say you first went on duty the night of the 29th?

A. That's right.

Q. Outside of that one occasion you have referred to on December 29, you were never stopped or molested at the head of that lane by anyone, were you?

A. I wasn't bothered on the 29th. It was the 30th.

Q. It was the 30th?

A. Yes, sir.

Q. Speaking—excepting on that one occasion, you were never stopped or molested in any way, were you?

A. I was never molested only verbally.

Q. There was never anything done toward you, such as shaking a fist or throwing a club or rock or anything of that kind?

A. Never anything done only verbal abuse.

Q. Verbal abuse is all you got, is that right?

A. Correct, except that one night, the night of the 30th.

Q. What hours did you work over there?

A. From 6 to 6.

Q. 6 o'clock at night until 6 in the morning?

A. Yes, sir.

Q. What day was it you saw Larry Howe there?

A. The night of the 30th.

Q. What time?

A. Around 9, 10 o'clock.

Q. And where was Larry Howe's car stopped, or was it stopped?

925 A. It was stopped at the "Stop" sign as you go on the pavement.

Q. Where were you situated at that time?

A. At the watchman's shanty about twenty feet from there.

Q. Which side of the car were these men around Larry Howe's car?

A. East side.

Q. And how far were you from the east side of Larry Howe's car?

A. About twenty feet.

Q. And you don't recognize, nor do you know, any of the men on duty at any of the times you were there, is that right?

A. I do not know.

Q. Didn't I understand you to say on direct examination you picked these nails up after the snow went off?

A. After some of it had went off, after it had melted, and the cars had been along there.

Q. The snow didn't go off for three or four days?

A. Yes, it did, on that south slope along that lane.

Q. How long did it take for the snow to go off?

A. I couldn't say exactly when.

Q. What is your best judgment?

A. Well, it seems to me like it melted some on the 31st and more on the 1st.

Q. I see. And what days did you see these nails put down, if you can pick out any day?

A. These nails on the lane was put on the 29th, night of the 29th.

Q. They were all put out on the night of the 29th?

A. Yes, sir, in the lane.

Q. You couldn't see where the nails come from, could you?

A. No.

Q. Could you—how dark was it there just as you 926 went off the pavement?

A. Which night?

Q. On the night of the 29th.

A. There was no light beyond the Nickel Plate Railroad.

Q. And did you see those nails after you got on the ground there in that darkness from that distance?

A. The first car that come along spied them.

Q. You didn't know what was put there until the car went along?

A. We took our flashlights and went up there and found them.

Q. How much time after you saw the man make that motion before you saw any nails on that—

A. I don't think I saw a man make a motion on the road.

Q. I thought you made a motion like that (illustrating.)

A. Not on that road.

Q. Some place else?

A. That is at the head of the lane.

Q. What I am talking about is the head of the lane.

Mr. Heyl: That isn't what he is talking about.

Q. Isn't that where your shanty is located?

Mr. Heyl: You have him down to the Lake Erie crossing.

The Court: Get him back.

Q. Where is your shanty located?

A. On the night of the 29th,—

Q. I asked you where your shanty was located. I am not asking about the 29th. It was the same place every night, wasn't it?

A. No.

Q. That shanty was moved around from night to night?

A. There was no shanty at the head of the lane the night of the 29th.

927 Q. When was it moved up there?

A. The 30th.

Q. Where were you stationed the 29th?

A. At the railroad crossing.

Q. Which crossing?

A. Nickel Plate, I guess. Nickel Plate trains run over it.

Q. How far was that Nickel Plate crossing from the head of the lane where the hard road goes by?

A. About a hundred and fifty yards, a hundred yards.

Q. How far from the Nickel Plate crossing did you say you saw Larry Howe's car come to a stop that night?

A. It was not there. It was at the head of the lane on the night of the 30th.

Q. On the night of the 30th. You were in the shanty the night of the 30th?

A. I was at the head of the lane the night of the 30th in the shanty.

Q. Didn't I understand you to say you saw some tacks put down on the 29th?

A. I said they were put down on the 29th.

Q. You weren't in your shanty? You were down at the Nickel Plate crossing?

A. I was.

Q. You didn't see anybody put anything down the 29th?

A. We have a searchlight that shows up the road about fifty yards.

Q. But you didn't see anybody put anything down the night of the 29th?

A. No, not the 29th; no, sir.

Mr. Knoblock: That's all.

The Court: Is that all with this witness?

928 Call the next witness.

CARL W. SUND, called on behalf of the plaintiff, and having been first duly sworn; testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

- Q. What is your name?  
A. Carl W. Sund.  
Q. Where do you live, Mr. Sund?  
A. 512 Roosevelt, Creve Coeur, Illinois.  
Q. What is your business or occupation?  
A. I have been night yardmaster for going on three years.  
Q. At the T. P. & W.?  
A. Yes, sir.  
Q. And on December 30 or 31, where were you stationed, or where were you working?  
A. December 31?  
Q. Let's take December 30 first.  
A. At the yards, East Peoria.  
Q. Do you use the lane leading to Route 24?  
A. Yes, sir.  
Q. Did you travel that lane that evening in going home?  
A. Yes, sir.  
Q. About what time?  
A. About 6 P. M.  
Q. What happened? What did you observe there, first?  
A. Well, I come up the lane, and there was quite a bunch of fellows.  
929 Q. How many?  
A. Oh, I would say about fifteen or twenty.  
Q. Did you recognize any of them?  
A. Yes, I did.  
Q. Whom did you recognize?  
A. C. L. Brown and Objartel.  
Q. Is that the name of the man? Objartel?  
A. Yes, sir.  
Q. Do you know his given name?  
A. A. Objartel; Objartel, I think it is.  
Q. A. Objartel?  
A. Yes.  
Q. Who else?

A. McMullen.

Q. Do you remember his first name?

A. No, I don't know his first name.

Q. Recognize any of the others?

A. That's about all.

Q. What did they say to you?

A. Well, when I stopped there was quite a few that come right up to the car, and one of them said, "We have had about enough of this. Let's turn the car over", so I had the window down, and I said, "Well, now, wait a minute here! Let's talk this over a little bit" and they seemed to be intent on turning the car over, and the fellows that I knew were in the back, and they kind of crowded to the front and come next to the car, and said, "No, we won't have that. We have known him quite a while, and he has always been a pretty good fellow. We are not going to do it", and then they crowded, the three I knew, 930 crowded up next to the car. They told me I had been doing work that day I wasn't supposed to do, and I told them I didn't see why, being as I was yardmaster. I thought I had a right to do the work which I had been doing, and they told me just what I was supposed to do, and what I wasn't supposed to do:

Q. Tell us what they said. We don't know what they told you without your telling us.

A. What they said?

Q. Yes.

A. They told me if I did the work I had always done, there wouldn't be a word said, it would be O. K.

Q. What else did they tell you you couldn't do?

A. They told me I had been doing the work down the street with a switch engine, such as pulling the freight house and pulling two or three industries, Trunk Olson and Riverside and Daly's. They said I had never done that work before, and that I wouldn't be allowed to do it now.

Q. What did they say would happen if you did do it?

A. They said it would be bad for me if I did it any more.

Q. Anything else happen that night?

A. No, sir, they let me go on my way.

Q. Is that the only incident that occurred?

A. Yes, sir, that's all.



Q. Any other day that you had any trouble?

A. No, sir.

Mr. Heyl: All right! Cross-examine?

931 *Cross-Examination by Mr. Knoblock.*

Q. They said to you if you did some other work of a different character it would be bad for you, is that right?

A. Yes, sir.

Q. And that is all they said in that regard?

A. That's all.

Q. And Brown and Objartel and McMullen came up there, and said you were a good fellow, and they always liked you?

A. Yes, sir.

Q. There was nothing done untoward regarding your car or person in any way?

A. No. I thought they were going to turn the car over. They took hold of the car, the fellows I didn't know. And when these fellows I knew saw they might turn the car over, they come up to the front.

Q. Nothing was done with reference to turning your car over?

Mr. Heyl: I object. He said they took hold of it and lifted it up.

Mr. Knoblock: Let the witness testify.

The Court: Do you want to withdraw the question, or want it read?

(Question read by reporter.)

The Court: You may answer that, whether anything was done toward turning it over.

A. It wasn't hurt in any way.

Q. You weren't hurt in any way, were you?

A. No, sir.

Q. And you have never been before or since that occasion?

A. No, sir.

932 The Court: Is that all with this witness?

Mr. Knoblock: Yes.

JAMES LANTZ, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

- Q. What is your name?  
A. Jame Lantz.  
Q. Where do you live?  
A. New Philadelphia.  
Q. What is your business or occupation?  
A. Engineer.  
Q. What is your age?  
A. Forty-six.  
Q. How long have you been working for the T. P. & W.?  
A. I came there the 20th of last month.  
Q. Had you worked there before?  
A. Yes, sir.  
Q. When?  
A. 1939 'til 1929.  
Q. Now, did you drive a car through the lane leading to the yard?  
A. Yes, sir.  
Q. When?  
A. About 3:45 Monday evening.  
Q. That was December 29, 1941?  
A. Yes, sir, '41.  
933 Q. Was anyone with you?  
A. No, sir.  
Q. What happened?  
A. Well, there was four men rushed out at the car, and tried to push it in the ditch.  
Q. What did they do? Tell what you saw them do.  
A. One of them pulled the door open.  
Q. What else?  
A. That's all.  
Q. How do you know they tried to push it in the ditch?  
A. They wouldn't have grabbed the fender and pushed on it, would they?  
Q. Who were these men?  
A. I don't know.  
Q. Did you say anything to him?  
A. No.

Q. Did they say anything to you?

A. When he opened the door and run his head in, I told him to get back out.

Q. Where did these men come from?

A. From a shanty on the right side of the lane as you go in.

Q. Leading from 24 into this lane?

A. Whatever the route is.

Q. From Peoria east, is that right?

A. Yes.

Q. Is that the road you are talking about?

A. The one that goes down to the office.

Q. This shanty was on which side of the lane as you started to go in the lane?

934 A. Right hand side.

Q. I believe I have asked you: You did not know who they were?

A. No, sir.

Q. Was that the picket line?

A. Supposed to be, I guess.

Q. How many were there?

A. I seen four.

Q. Did you have any difficulty there any other time?

A. No, I haven't.

Q. Did you go in and out after that day?

A. I went out Sunday.

Q. Last Sunday?

A. Yes.

Q. January 3? It was after the restraining order, is that what you mean?

A. Yes, sir.

Q. Is that correct?

A. Last Sunday.

Q. Now, were you on a train, on extra 42 west, on December 31, 1941?

Mr. Knoblock: Extra what?

(Question read by reporter.)

Q. On December 31, 1941?

A. No, I wasn't.

Q. Well, were you at Crescent City at any time?

A. I came from the east.

Q. West?

A. West, yes. That is extra 42, that's right.

Q. West from Effner?

A. Coming from the east. That's right.

935 Q. What did you observe at Crescent City?

A. I saw a light out over there. Somebody had broken the lights out of the switch stand.

Q. What side of the town or village?

A. East end.

Q. Which track?

A. Crescent City was on the south side.

Q. And where is that? The switch leading from the side track to the main track?

A. That's right.

Q. On the same day or night did you observe anything at LaHogue?

A. On the north side the switch light was broken out.

Q. Broken out?

A. Yes, sir.

Q. Can you describe how it was broken out?

A. Looked like it had been broken out with a rock or something.

Q. With what?

A. A rock or something.

Mr. Knoblock: I object.

The Court: Yes.

Q. What part was broken?

A. The glass.

Q. All the glass?

A. On the one side I could see.

Q. Anything else you observed at the switch?

A. No.

Q. Where were you when you made these observations?

A. On the engine.

Q. On the engine?

936 A. Yes.

Q. Passing there?

A. Passing there on the engine.

Q. What were you going on the engine?

A. Fireman that trip.

Mr. Heyl: That's all. You may cross-examine.

The Court: Cross-examine!

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Lantz, you don't know who did it? Anything to those switch lights at any time?

A. No, I don't.

Q. You have no knowledge other than what you happened to see?

A. Only what I happened to see.

Mr. Knoblock: That's all.

The Court: I think we will stop at this point, gentlemen.

Trial Adjourned at 5:20 o'clock P. M..

937

January 14, 1942.

Trial Resumed at 9:30 o'clock A. M.

Appearances:

Same as before.

Mr. Knoblock: I want to notify the court I received this notice to produce documents. I haven't read it, don't know what it means or what it requires, and I want a reasonable time.

Mr. Elliott: We probably won't need those until toward noon.

The Court: We will have to do the best we can. Let's go along with the witnesses. We won't require an impossibility.

Go ahead!

Mr. Elliott: I want to ask him one question. I am recalling Mr. Heilman.

JOHN H. HEILMAN, recalled, having been previously sworn, testified as follows, in answer to

*Direct Examination by Mr. Elliott.*

Q. Mr. Heilman, what is your name?

A. J. H. Heilman.

Q. You are the same J. H. Heilman who was on the stand yesterday,—

A. Yes, sir.

938 Q. —and the day before? And you are trainmaster and chief dispatcher?

A. That's right.

Q. I will ask you, Mr. Heilman, if you know the cars that are put into the different cuts that have been testified about in this case in extra 43, extra 41, and so forth?

A. That's right; I do.

Q. You may look at Plaintiff's Exhibit 18, which has heretofore been offered in evidence, and state whether or

not the cars as listed in this Exhibit 18 in the different trains as headed were, to your knowledge, placed in those respective cuts of cars?

A. Yes, sir, they were.

Q. And were the cars that are listed in this Exhibit 18 under extra 43 west and the P. & P. U. delivery in the extra 41 west actually put in those respective cuts and trains?

A. Yes, sir.

Mr. Elliott: That is all.

The Court: Cross-examination?

Mr. Knoblock: May we see those, please?

(Examines same.) No cross-examination.

Mr. Elliott: That's all, Mr. Heilman.

This 18 has been admitted, hasn't it?

The Court: Yes.

939 CLAYTON PEARSON, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Clayton Pearson.

Q. Where do you live?

A. I live at 117 Apple Avenue, Creve Coeur.

Q. How old are you?

A. Twenty-eight.

Q. What is your business or occupation?

A. Assistant manager of the Steak and Shake.

Q. Where is the Steak and Shake?

A. 1200 West Washington, East Peoria.

Q. Where is that with reference to the east end of the Peoria bridge over the Illinois River?

A. That's directly at the east end of it.

Q. And how far is your place from the railroad of the T. P. & W.?

A. Oh, about eighty feet from the tracks, I'd say.

Q. And you were subpoenaed here as a witness, were you,—

A. That's right.

Q. —by the United States Marshal?

A. That's right.

Q. Do you recall in the last week of December, 1941, a



train or an engine and cars on the T. P. & W. approaching the Illinois River bridge being stopped on that occasion?

A. Yes.

Q. Do you know what day it was?

A. It was two days before New Year's, I believe.

940 Q. What time of the day was it?

A. Approximately 3 o'clock in the afternoon.

Q. Where were you with reference to that train?

A. I was in our biggest front window.

Q. How far, in feet, from that place to where the engine was stopped?

A. Well, it wouldn't be over a hundred, hundred and fifty feet.

Q. And will you tell the court just what you observed from the first time you looked out there until it was all over? Just tell the story as you know it.

A. When I first looked out, the men seemed to be off of the train, I didn't see anybody on the train at all, men were running, and there was a lot of people there, I don't know who, but they were running in all directions, a few brickbats were flying. I seen one man run up the street. I seen several men run up the street, rather, and one of them got hit and knocked down on the other side of the street, which would be probably a block and a half from where I was at.

Q. Is that man that you saw get hit and knocked down one that was running from the engine?

A. He was running away from it. I don't know whether he got off of it.

Q. How many men were following?

A. Oh, three or four.

Q. And what happened to him after you saw him hit?

A. He was left right there.

Q. Was he lying on the ground?

A. Temporarily. He got up right away.

Q. Now, what else did you see with reference to automobiles? Did you see any damaged automobiles about there?

941 A. I saw a car go by with a broken window, yes.

Q. How long did this stoning of the train continue?

A. Oh, it was over momentarily. It didn't seem to last very long.

Q. After they got out of the engine, after the crew got out of the engine, the stoning stopped temporarily, did it?

A. Yes.

Q. And they all started on chasing these men who were on the train, is that correct?

A. There was a lot of men running.

Mr. Knoblock: I don't want to object on the leading, but he is leading.

The Court: Yes.

Mr. Heyl: That's all. You may cross-examine.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Pearson, you don't know what precipitated this occasion in any way, or what caused it?

A. Nothing but hearsay, no.

Q. And you are unable to identify or know any of the parties involved there?

A. I know nobody that was there at all except my own employees, and they were merely spectators.

Q. You say when this one man fell down he was a block or a block and a half away?

A. Yes.

Q. You couldn't tell for sure whether or not he was hit at that distance?

A. Nothing except by the actions.

942 Q. He got up right away, you say?

A. Yes.

Mr. Knoblock: That's all.

The Court: Call the next witness.

ROY SILCOX, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Roy Silcox.

Q. And where do you live, Mr. Silcox?

A. Covington, Kentucky.

Q. And are you temporarily residing here?

A. Yes, sir.

Q. Where are you residing?

A. 300 East Washington Street, East Peoria.

Q. Were you working for the T. P. & W. Railroad in the last week of December, 1941?

A. I started January 5.

Q. January 5?

A. 1942.

Q. Where is the place of your employment?

A. Switch tender down at the P. & P. U. junction.

Q. Where is the P. & P. U. junction?

A. At the west end of the Illinois River at the bridge.

Q. And what, if anything, did you observe at your 943 station on January 6, 1942, when you came to work in the morning? Was it the 6th?

A. The 7th.

Q. The 7th?

A. Yes, sir. I noticed, upon reporting to work, the door had been opened and, after entering it, there was kerosene all over the floor.

Q. All over the floor of what?

A. Over the floor of the shanty.

Q. What condition was it in with reference to being locked?

A. The door had been opened. I know that.

Q. Was the door locked when you got there?

A. No, sir, it was opened.

Q. Was it locked when you left there?

A. Yes, sir.

Q. When did you leave there?

A. I left at 6 o'clock the night before.

Q. What kind of a lock was on it?

A. Just an ordinary lock.

Q. That doesn't tell us a thing. Yale lock or padlock or what? Or ordinary door key?

A. Ordinary door key, yes, sir.

Q. You opened the door and went in the shanty, and what did you find?

A. I found kerosene had been scattered over the floor, and there was bits of charred paper all over the floor, and matches.

Q. What else?

A. Well, I noticed that several of the reports that had been hanging on the wall were missing.

944 Q. What reports were they?

A. Reports on train movements.

Q. Where were they?

A. Hanging on the wall.

Q. When you left?

A. Yes, sir.

Q. Where did you find them that morning?

A. I didn't find them.

Q. Did you look for them?

A. Yes, I looked for them because I had to have them, and I noticed there were bits of charred paper on the floor.

Q. Did those papers relate to the movements of trains the following day?

A. Yes, sir.

Q. The day you were starting to work is when you found this condition, is that it?

A. Yes, sir.

Q. What did you find on the floor? Find anything with reference to stains on the floor?

A. Well, I found— Of course, I noticed this kerosene, noticed there was one burned place in the floor where the floor had evidently tried to burn but couldn't.

Q. How much of the space was burned?

A. I would say from anywhere between four and six inches square.

Q. What did you do after discovering what you have just stated, with reference to notifying the authorities?

A. Well, I notified Mr. Kipling, and he told me—instructed me not to—

Mr. Knoblock: I object to this.

945 The Court: You notified Kipling? What else?

Q. After you notified Kipling, what did you do?

A. I didn't do anything until he came down.

Q. Did you use the shanty, or go in it?

A. I was already in the shanty, but I didn't touch anything until they arrived down to look at it.

Q. Who arrived?

A. Mr. Kipling and the Marshal.

Q. United States Marshal?

A. Yes, sir.

Q. What time did they arrive?

A. Approximately around 9 o'clock.

Q. That same morning?

A. Yes, sir.

Q. Same things in the same condition when they arrived as when you went in that morning and found it?

A. Yes, sir. I didn't touch a thing.

Q. You didn't touch anything?

A. No, sir.

Mr. Heyl: Cross-examine!

*Cross-Examination by Mr. Knöblock.*

Q. Mr. Silcox, when did you come to Peoria from Covington, Kentuncky?

A. January 5.

Q. And who contacted you to come up here to seek employment?

A. Sir?

Q. And who contacted you to come up here to seek employment?

A. My father.

Q. Your father lives here in Peoria?

946 A. Yes, sir.

Q. What was your work down at Covington, Kentucky?

A. I was working for an oil company.

Q. What is your work over here? I didn't get what work you were doing.

A. Switch tender.

Q. And are you receiving \$10.00 ~~day~~ over and above your regular rate of pay?

A. No, sir.

Q. You are not?

A. No, sir.

Q. What is your rate of pay?

A. 45¢ an hour.

Q. And on January 7, 1942, what time did you arrive at this shanty you speak about?

A. Approximately about five minutes after 6 o'clock.

Q. And the lock on that door, you say, can be opened by an ordinary house key?

A. Yes, sir.

Q. And it's not a difficult lock of any kind to open, is that right?

A. Just an ordinary skeleton key will open it.

Q. Will open it?

A. Yes, sir.

Q. And you have absolutely no knowledge of whether or not anybody was in that shanty that night?

A. No, sir.

Q. And if anybody was in there, you don't know who they were?

A. No, sir, I don't.

947 Q. What hours do you work there?

A. From 6 to 6.

Q. What man relieves you at 6 o'clock?

A. Well, until then I was the only one down there. Now they have two shifts, and my shift now is from 4 P. M. to 2 A. M.

Mr. Knoblock: That's all.

The Court: Call the next witness.

ARTHUR R. SULLIVAN, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Arthur R. Sullivan.

Q. Where do you live?

A. 100 Rebecca.

Q. Peoria, Illinois?

A. Yes, sir.

Q. What is your age?

A. Forty-nine.

Q. What is your business or occupation?

A. Trainmaster for the Rock Island.

Q. How long have you been the trainmaster of the Rock Island?

A. Six years.

Q. You are located here in Peoria, are you?

A. Yes, sir.

948 Q. Where do you perform the duties of your employment?

A. Well, from Peoria to Burlington, and from Peoria to Rock Island over the "rep" line, and the Peoria and Pekin Terminal.

Q. Peoria and Pekin Terminal is a part of the Rock Island system?

A. Yes, sir.

Q. Do you recall the three cars loaded with bottles from Muncie, Indiana, consigned to Hiram Walker & Sons, Inc., Peoria, and two empty cars, one C. & O. and one S. F. R. D.—

A. Yes, sir.

Q. —that were placed on the C. B. & Q. track by the T. P. & W. on December 31, 1941?

A. Yes, sir.



Q. On the train near Chestnut Street? Do you recall that?

A. Yes, sir.

Q. Will you tell us what you had to do with reference to the movement of those cars following December 31, 1941?

A. We had nothing to do with it. The C. B. & Q. brought the cars up by mistake when they pulled the transfer, and the cars came up to the Rock Island as "no bills" until we found out.

Q. What did you do with them?

A. We kept the cars, and delivered the three bottles to Hiram Walker.

Q. When did you make the delivery?

A. I believe it was on the 1st after we found who they were for. The cars came up the night of the 31st, I think, close to midnight.

Q. Came up where?

A. To the Rock Island yards by the C. B. & Q.

Q. In other words, they were moved from Chestnut 949 Street to the Rock Island yards, is that right?

A. Yes, sir.

Q. When did you make delivery of them?

A. I believe it was sometime in the afternoon of the 1st.

Q. The 1st or the 2nd?

Mr. Knoblock: I object. He answered the 1st.

A. They were delivered when they were ordered in by Hiram Walker. I don't recollect the date, but when they were ordered in they were placed there.

Q. Now, I will ask you if you remember some additional cars, one of scrap iron, from Keokuk, Iowa, a G. N. car of implements from Syracuse, New York, S. S. W. car, implements from Terre Haute, Indiana, and two empties. Do you recall those cars?

A. I don't recall any cars in particular. I didn't handle any way bills or switch lists.

Q. Did you receive those cars?

Mr. Knoblock: I object. He said he didn't recall.

Mr. Heyl: I am asking if he received those cars I have mentioned.

The Court: He may answer.

A. I know we had a car of scrap iron we delivered from the T. P. & W., and also some implements, but I don't recollect any cars, car numbers.

Q. Did you have any difficulty making delivery of those cars to the T. P. & W.?

A. Do you know what date that was we delivered them?

Q. January 2, 1942.

A. No, we had no difficulty.

Q. Did you have any difficulty any time before January 4 or 3, 1942 while this strike was on?

A. I believe it was on the 2nd that we started over with a delivery, and were stopped by one man with a picket sign, and returned to the yards with the cars. We were notified by our officials then to deliver them, and we went over later on that afternoon.

Q. How much of a delay was there on account of that?

A. Well, it must have been three or four hours. We went over there around 6 o'clock that night, and we were stopped around 2:30 that afternoon, I believe.

Q. Where were you stopped?

A. Just as we go on the T. P. & W. junction there at State Street.

Q. Did you have any conversation with any of the pickets?

A. Well, there was a man there. The spokesman— He had been walking in front of the engine, and the switchman was talking to him, and asked him, when I come up, what the trouble was, and the picket said he had instruction not to go by the picket line, and I waited until I went back and had instructions to deliver them.

Q. Did you talk with this picket?

A. I don't recollect whether I did or not. I don't believe I have talked with any of the pickets.

Q. Was this with your own switchman?

A. Yes, sir.

Mr. Knoblock: I object to that.

The Court: Oh, I think he may answer.

Q. Was that in the presence of this picket?

A. He was standing there at the crossing.

Q. On January 3, 1942, about 10:40 A. M. did you have a conversation with one of the officials or officers of the 951 C. B. & Q. with reference to their delivery, or attempted delivery, of the seventeen cars on January 2, 1942?

Mr. Knoblock: I object to any conversation.

The Court: He asked if he had a conversation.

He can testify to that.

Q. Did you have such a conversation?

A. I believe I have. I have talked to them at different times over the telephone.

Q. Do you understand what I asked you? I asked if you had a conversation at 10:40 A. M. January 2, 1942?

A. Yes, sir, I believe I had.

Q. Who is your general yardmaster?

A. Joe Kelly.

Q. And at the time I have indicated, were you advised as to what had happened to the C. B. & Q. cars on January 2, 1942?

Mr. Knoblock: I object to this.

Mr. Heyl: I am not asking for the conversation.

The Court: I think that objection will be sustained.

Mr. Heyl: All right.

Q. Did you receive some information, without stating what it was, from the C. B. & Q. with reference to delivery of cars?

A. Yes, sir.

Q. Did you deliver any cars following that information? Receipt of that information, prior to the time this restraining order was issued in this case the afternoon of January 3, 1942?

A. Was that a Sunday?

Q. No, that was Saturday.

A. No.

Q. You didn't make any more deliveries?

952 A. No, we made the delivery on a Sunday, I believe.

Q. That would be the 4th?

A. 4th.

Q. Can you tell the court what caused the delay in the delivery of these cars?

Mr. Knoblock: I object to that.

The Court: I think he may answer if anything caused the delay.

You may answer.

A. Why, I don't believe we had anything important to deliver. I think I just called him to find out—if he had had any trouble making his delivery. I believe we only had the car of scrap and the two empties.

Q. They were not delivered, were they?

A. No, sir.

Q. Is it your practice to hold up deliveries when you have only one car?

Mr. Knoblock: I object to that.

The Court: Sustained.

Q. What is your practice with reference to delivery of freight on this road?

Mr. Knoblock: I object.

The Court: Sustained.

Q. Now, did you have any conversation with any of your men with reference to delivering cars through these picket lines to the T. P. & W., without stating what it was?

A. I tried to make the deliveries as we previously had done.

Q. Did you understand my question?

(Question read by reporter.)

953 Q. I mean your switchmen or employees engaged in moving cars.

A. Read that again.

(Question reread by reporter.)

A. Yes, sir.

Q. And when did you have these conversations?

A. Oh, at different times through the yard.

Q. I will ask you if it is not a fact that you had for delivery to the T. P. & W., prior to January 3, 1942, and prior to the time the restraining order was issued, the following cars:

M. W. X., implements, Peoria, Ill., destination Terre Haute, Ind:

S. A. L. car, empty, Peoria, Ill.

P. A. car, scrap iron, Chicago, destination Keokuk, Iowa.

2 C. & O. cars, empty, Peoria, Ill.

G. N. car, implements, destination Syracuse, N. Y.

S. S. W., implements, Peoria, Ill., destination Terre Haute, Ind.

C. B. & Q., feed, St. Joe, Mo., original destination Gridley.

2 C. & O. cars, empty cars, Peoria.

1 Rock Island car, feed, destination Mt. Holly, N. J.

Isn't it a fact you had those cars at that time, and hadn't delivered them?

Mr. Knoblock: I object. This is his witness.

He is trying to impeach his own witness, apparently.

The Court: I think he may answer.

A. I recollect some of those cars, but I couldn't swear to all of them.

Q. Isn't it a fact you didn't give the order to deliver those cars by your railroad, Rock Island, to the T. P. & W. until 5:55 P. M., January 3, 1942, after you were advised a restraining order had been issued, and there would be no violence?

Mr. Knoblock: I object.

The Court: Sustained.

Q. When did you deliver them?

Mr. Knoblock: I object to that.

The Court: He may answer.

A. 6:05 P. M., January 4, I believe, is the delivery time.

Q. How long had you had these cars?

Mr. Knoblock: I object as having been asked and answered.

The Court: Yes, objection sustained.

Mr. Knoblock: No cross-examination.

955 OLAF HANSON, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Elliott.*

Q. What is your name?

A. Olaf Hanson.

Q. Where do you live, Mr. Hanson?

A. I live at 505 Blaine Street, and I got my business at 3117 South Adams.

Q. Where is that with reference to Western Avenue?

A. Well, it's south of Western Avenue.

Q. About how far?

A. Well, it's about the middle of the block.

Q. About the middle of the first block?

A. About the middle of the first block, yes.

Q. You were subpoenaed in this case, were you not?

A. Yes, sir.

Q. Were you at your place of business on January 2 in the forenoon?

A. Yes, sir.

Q. What is your business?

A. Shoe repairing.

Q. And during the morning of January 2 I will ask you if you observed anyone out in front of your place, and giving instructions to call the police?

A. Yes, sir.

Q. Do you know about what time in the morning that was?

A. Well, I don't know exactly. It was in the early part of the forenoon.

956 Q. Where was this party that was asking that the police be called, with reference to your place of business?

A. Well, pretty near exactly in front of my place.

Q. Did you observe the party that was out there and asking that the police be called? Did you see him?

A. I saw a man, yes.

Q. Where was he with reference to the front of an automobile?

A. He was right in front of an automobile.

Q. What, if anything, did he have in his hand?

A. Well, he had something in his hand that looked like a shotgun.

Q. Tell the court how he was holding that gun. Was he pointing it at anybody?

A. No, sir, not at that time.

Q. Did you see him point at anyone at any time that day?

A. No, sir.

Q. How close was he standing to the front of the automobile?

A. Well, I imagine about three or two feet, two or three feet.

Q. Did he or not remain there until the police came?

A. Well, he stood there for a while. I didn't see when the police came.

Q. You didn't see when the police came?

A. No.

Q. Do you know how soon after the call for the police was made that the police came?

A. Well, it wasn't very long.

Q. And after the police came, what occurred with reference to this man and the men that were in the automobile?

A. Well, I couldn't say. I didn't see that.

Q. Do you know who called the police?

957 A. No, sir.

Q. When was the first that you saw this man standing in front of the automobile?

A. Well, the first I noticed was when I heard them ask for somebody to call the police. That is the first time.

Q. That is the first you noticed?

A. First I noticed, yes.

Q. Where was he standing when you heard him call for the police?

A. He was standing right in front of the automobile.

Q. Were you out on the street, or did you see that through the window of your store?

A. I saw it through the window.



Q. Did you hear what was said with reference to the calling of the police?

A. No.

Q. How did you know he was calling for the police?

A. I didn't know. I heard him ask somebody, that's all I know.

Q. And you learned that the police had been called?

A. Yes.

Q. Did you or not observe how many men were in the car that was standing there with this man in front?

A. Well, I saw one sitting at the wheel.

Q. Did you observe whether there was any other man in the car?

A. No.

Q. You don't know whether there was or not?

A. I don't know if there was more than one, no.

Q. Was there another car standing there?

A. Beside this car that was—

Q. That the man was in.

958 A. Yes, there was two cars parked right in the middle of the street.

Q. Parked right in the middle of the street?

A. Yes.

Q. Was there anybody in the car that was in the middle of the street?

A. In the cars there was one man. I saw one man sitting.

Q. You saw one man sitting in a car?

A. Yes.

Q. How long did you observe this situation there?

A. Well, it wasn't very long. I was busy, and I went right back to my work.

Q. Can you give me any idea as to how long it was?

A. Oh, probably five minutes.

Q. And you paid no attention when the police came as to what became of the people?

A. No, I did not.

Q. You kept on with your work?

A. I kept on with my work, yes.

Q. You didn't know any of these parties, did you?

A. No.

Mr. Elliott: That's all.

*Cross-Examination by Mr. Knoblock.*

Q. What hour of the morning did this situation occur, Mr. Hanson? About what hour would you say?

A. I couldn't say what hour exactly. It was in the early part of the forenoon.

Q. Say 7 o'clock?

A. No, it wasn't that early. I don't get to work before 8, and it was probably between 9 and 10, as far as I can remember.

Q. Who else was in your store at that time?

A. There was a lady in the store at the time.

Q. Do you know her name?

A. No, I don't.

Q. What first brought your attention to this situation?

A. When I heard a fellow ask for the police, for somebody to call the police.

Q. And that man was not the man holding the gun, was it?

A. I think it was him, yes.

Q. Did he call to you?

A. No, he didn't call to me.

Q. Could you hear the conversation that went on out in the street?

A. No, sir.

Q. And what was said out there you don't know?

A. I don't.

Q. During all the time that you watched this incident, the man standing in front of the automobile had the shotgun in his hand?

A. He had something in his hand that looked like a shotgun.

Q. What side of the street is your place of business? The river side?

A. No, the north side.

Q. And was this automobile north or south of your place? Was it toward town from your place, or away from town?

A. The two automobiles were standing right in the street car tracks.

Q. Were they closer to the business part of Peoria, or were they away from the business part of Peoria with respect to your place?

A. So far as I can remember, they were about in the middle of the street.

960 Q. I know, but, as you looked at them, were they to your right or your left?

A. Well, I don't know what to say about that. It was right in front of my store.

Q. They were straight ahead, were they?

A. Right ahead, yes.

Q. Did you see a street car come up behind one automobile parked in the street?

A. I think that was going down Adams Street.

Q. You didn't see one coming toward the City of Peoria?

A. No.

Q. You don't know how long they stood there that morning, do you?

A. No, I don't.

Q. And you didn't hear what the man holding the shotgun said to the man in the car, do you?

A. No.

Q. You didn't observe it close enough to see whether there was one or two men in the automobile, did you?

A. No.

Q. And all the time that you watched this incident, this man with the shotgun was pointing it at the man in the car?

A. No, he was not.

Q. What was he doing with it?

A. He was holding it in his hand, not pointing it at anybody.

Q. He wasn't pointing it at anybody?

A. Not at that time.

Q. You watched it for about five minutes?

A. Yes, sir.

961

*Redirect Examination by Mr. Elliott.*

Q. How was he holding the gun?

A. Standing like this (demonstrating).

Q. With the barrel of the gun toward the ground?

A. That is the way he was standing when I saw him.

Q. Your place is on the bluff side of the street?

A. Yes.

Q. Where was this automobile and the man that was standing in front of it? Was that on the bluff side of the street, or river side?

A. The man in the car was on the river side of the street.

Q. And this man was standing in front of the car?

A. Yes.

Q. Take this ruler, and indicate how he was holding the gun.

Mr. Knoblock: I object.

The Court: I think he may do it.

A. (Witness complies). Like this.

Q. With the barrel pointing toward the ground?

A. Yes.

Mr. Elliott: That's all.

Mr. Knoblock: That is all.

962 R. E. GREEN, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Elliott.*

Q. What is your name?

A. R. E. Green.

Q. Where do you live?

A. Peoria.

Q. And what is your business?

A. Electrician, T. P. & W.

Q. For what company?

A. T. P. & W. Railroad.

Q. How long have you been an electrician for the T. P. & W.?

A. Twelve years.

Q. Continuously?

A. That's right.

Q. Where is your place of work?

A. East Peoria shops and roundhouse.

Q. Were you on duty on the 30th of December?

A. I was, yes.

Q. That was Tuesday?

A. I believe Tuesday.

Q. Do you know the location of the lane that leads from hard road 24 down toward the shops?

A. Yes, I do.

Q. What, if anything, did you have to do with the installation of an electric light at the entrance to that lane leading from Route 24 toward the shop?

963 A. When the installation was started, I was not available and the signal department of the railroad started the job, and I later arrived there and helped complete it.

Q. Tell us just where that light was placed, and how it was located.

A. I would say the lane is approximately twenty feet south of the edge of the concrete highway in the lane, on the east side of the lane, mounted on a pole about twenty feet in the air.

Q. And what is the candle power of that light?

A. Light any more is not rated in candle power.

Q. Tell us how it is rated, then.

A. In our industry we use foot candles as a rating of illumination.

Q. Tell us the rating of this light.

A. When it was originally put up on that date, the signalman put a thousand watt lamp in, and I understand it was changed about—

Mr. Knoblock: I object to what he understands.

The Court: Do you know whether it was changed.

A. I have the word of the signal supervisor.

Q. Did you observe it after it was placed there?

A. I did not observe it after dark.

Q. Who was the signalman that advised you with reference to any change?

A. L. H. Hultgren.

Q. What sort of a shade or cover was on that light?

A. It's an elliptical-shaped reflector, commonly known as a floodlight.

Q. How was that light placed with reference to throwing the glare onto the pavement?

A. It was Mr. Hultgren's intention to place the light—

Mr. Knoblock: I object to this.

964 The Court: State how it was placed.

Q. State how it was placed, if you know.

A. I just have his word. I do not know.

Q. And you have made no test of it at night?

A. I made a test on January 10.

Q. Was that the same light that was there previously?

A. No, there is a three hundred watt light, and there was on January 10 a three hundred watt light.

Q. What was it on December 30?

Mr. Knoblock: I object as having been asked and answered.

The Court: If he knows.

A. I just have Mr. Hultgren's word.

Q. Did you observe the glow of the light that you tested on January 10 as to the illumination it afforded?

A. I did.

Mr. Knoblock: I object.

The Court: Is there any serious question as to whether there was a light?

Mr. Heyl: There has been some question about what the extent of illumination was. This man doesn't seem to know what the illumination was.

Mr. Elliott: That's all.

Mr. Knoblock: No cross!

965 GERALD R. KRONBLAD, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Elliott.*

Q. What is your name?

A. Gerald R. Kronblad.

Q. Where do you live?

A. 103 High Street, Peoria.

Q. What is your business?

A. Chief clerk to the superintendent, T. P. & W. Railroad.

Q. How long have you been such chief clerk?

A. For five and a half years.

Q. What, if anything, do you have to do as a part of your duties with reference to keeping the record of switch keys?

A. The switch keys are turned in to our office, and checked off before a man is given his final pay check.

Q. To whom are switch keys furnished?

A. They are furnished to engineers, firemen, conductors, brakemen; all firemen are not furnished some switch keys, but some are, and, in addition, there are section men and maintenance men who are also furnished keys.

Q. Do you keep a record of those keys that are given out and turned in?

A. Yes, sir, we have a record in our office.

Q. And that is kept under your general supervision, is it?



A. Yes, sir.

Q. Do you know the men that went out on strike on the evening of December 28?

966 A. Do I know them?

Q. Yes.

A. Yes, sir, I know most of them.

Q. I will ask you whether or not—how many went out on strike,

Mr. Knoblock: I object, unless he knows.

Q. If you know.

A. There were about ninety-three notices served, I believe.

Q. I will ask you whether or not, prior to today, any of the keys held by those men who went out on strike have been turned in?

A. A check which I made up until noon of yesterday revealed that fifteen men had turned in their company property, that is, fifteen men of the men that went out.

Q. Had any of the others turned in their keys?

A. What do you mean?

Q. The other men that went out on strike, aside from the fifteen.

A. No, sir.

Q. The difference, then, between ninety-three and fifteen still have keys?

A. Yes, sir.

Q. And that was your check up until noon yesterday?

A. Until noon yesterday.

Q. Of those fifteen that were turned in, when were they turned in?

A. They were turned in—That check was made between December 28 and noon yesterday.

Q. And it was sometime between those dates that the fifteen were turned in?

A. Yes, sir. The first keys were turned in on December 31.

Q. Have you made a request of any who have refused to turn in their keys?

967 A. All men were asked to turn in their keys when they served a notice that their employment had ceased.

Q. When was that notice?

A. That notice was dated December 31, 1941.

Q. Was that notice sent to the ninety-three men who had gone on strike?

A. Yes, sir, sent by registered mail.

Q. Were the registered receipts returned?

A. To date all but two have been returned.

Mr. Elliott: That's all.

The Court: Cross-examine!

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Kronblad, I will ask you if you know whether or not these men you referred to consider themselves as discharged?

A. I am afraid I couldn't answer that.

Q. I didn't think you could! And you don't know whether or not some of the officials of the T. P. & W. are contacting some of these men, requesting them to come back to work on Mr. McNear's terms, do you?

A. No, sir, I couldn't answer that.

Mr. Knoblock: That's all.

Mr. Elliott: That's all.

968 WILLIAM J. HUNTER, recalled, having been previously sworn, testified as follows, in answer to

*Direct Examination by Mr. Elliott.*

Q. State your name.

A. William J. Hunter.

Q. Are you the same William J. Hunter on the stand once before?

A. Yes, sir.

Q. What is your occupation?

A. Trainmaster's clerk.

Q. Were you on duty on December 29 at the time of the occurrence up at the head of the lane?

A. Yes, sir.

Q. Was that occurrence reported to you with Zeno Merrill? Was that on the 29th or 30th?

A. No, sir. That was on the night of the 30th.

Q. Were you on duty at that time?

A. Yes, sir.

Q. And what, if anything, did you have to do with the calling of the police?

A. Nothing.

Q. Do you recall the occurrence when the train was stopped east of the Illinois River bridge?

A. Yes, sir.

Q. Did you have anything to do with calling the police at that time?

A. I called the East Peoria police, and they told me there had been a car already sent down.

Q. Somebody else had called previous to that?

969 A. Yes, sir.

Q. I will ask you if, prior to the calling of the strike, you had any conversation with Verd Kirk with reference to what might occur if a strike was called?

Mr. Knoblock: I object to what might have occurred.

The Court: I think he can state the conversation.

A. Yes, sir.

Q. About when did you have that conversation, Mr. Hunter?

A. Well, it was in the early part of December; December 5.

Q. And where did it occur?

A. On the yard engine, East Peoria yard.

Q. Tell us what Mr. Kirk said at that time.

Mr. Knoblock: I object to that as too remote to the issues in this case.

The Court: No. Tell us what you both said.

A. I got on the yard engine out there the evening of December 5, and rode up and down the lead a while. Mr. Kirk asked me how things were going. I told him as far as I know everything was going all right, and he asked me, or said to me, then that he was afraid if the train and engine employees went on a strike there might be trouble.

Q. Did you say anything in reply to that?

A. No, sir.

Q. Was that on the engine that was being operated by Mr. Kirk?

A. Yes, sir.

Q. Did you have any conversation with Smith Engelhart?

A. Yes, sir.

Q. When did you have a conversation with him?

A. At that same time on the same engine.

970 Q. He was the fireman at that time, was he?

A. Yes, sir.

Q. What did Engelhart say, if anything?

A. Mr. Engelhart told me that he had heard, if they went on a strike,—

Mr. Knoblock: I object to this.

The Court: I don't see what you are trying to prove. The conversation with a man before they went on a strike, said there might be trouble, anybody would say that.

Mr. Heyl: There is something more to this statement.

The Court: Let's see what the next one was.

A. Mr. Engelhart told me he had heard, if they went on a strike and attempted to operate any trains, there would be none get as far west as the Illinois River bridge or as far east as Washington Street.

Mr. Knoblock: I object.

The Court: Is that what he heard?

A. Yes.

The Court: Sustained.

Mr. Heyl: It is stated by a man a member of the union, and would show—

The Court: It doesn't show me a thing.

Mr. Knoblock: —who might have told it to him?

A thousand men might have told it to him.

The Court: Complete your record, but I will sustain the objection.

Q. Did he tell you who had said that to him?

A. No, sir.

971 Q. And you do not know who made the statement to Engelhart?

Mr. Knoblock: I object as having been asked and answered.

The Court: Sustained.

Q. Did you or not report the conversation that you had with Kirk and Engelhart to the railroad officials?

A. Yes, sir.

Q. When?

A. That same evening.

Q. To what official did you report it?

A. Mr. Best.

Q. He was the superintendent?

A. Yes, sir.

Mr. Elliott: That's all.

Mr. Knoblock: No cross-examination.

972 JOHN WOLF, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. John Wolf.

Q. Where do you live?

A. South Adams.

Q. What number on South Adams?

A. 3113.

Q. And are you in business there?

A. Yes, sir.

Q. You live at your place of business?

A. I don't live at my place of business.

Q. What is the number of your place of business?

A. I really couldn't tell you the number of the place, where I moved to.

Q. It is in what block? What block on South Adams Street?

A. It's at the furniture store, and I couldn't tell you exactly in what block.

Q. Where is it with reference to Washington Street?

A. With reference to Washington it would be, I judge, around a half a block back of Washington where it comes into Adams.

Q. And where Krause Avenue—

Mr. Knoblock: I don't follow that.

The Court: You know how to find it?

A. Oh, yes. I just can't think of the number.

The Court: Go ahead!

973 Q. Is your number 3113?

A. 3113 is where my place of business is.

Q. Where you live?

A. 3113 is where my place of business is.

The Court: Is that where your place of business is now? 3113 what?

A. South Adams.

Q. 3113 South Adams.

A. South Adams.

Q. Where do you live with reference to that?

Mr. Knoblock: I object. He says he doesn't know.

The Court: I think he may answer. Where do you live?  
Is it material?

Mr. Heyl: I don't think it is.

Q. Were you at your place of business on Friday, January 2, 1942?

A. Yes, sir.

Q. And did you observe anything unusual in the street immediately in front of your place of business?

A. Well, there was a car which had drove up there, a car that had drove up in front, and another car pulled to the side of it, and a fellow that was in one car got out in front of the other one with a shotgun under his arm, or rifle, or whatever it was.

Q. About what time of day was that, if you know?

A. That was somewhere around 9 o'clock.

Q. Now, what attracted your attention to the street?

A. The man that got out of the one car with the gun, he hollered to somebody to call the police.

Q. Where were you at that time?

974 A. Standing at my place of business.

Q. Did you see him then from that time on, this man that asked the men to call the police?

A. No, I haven't.

Q. Did you see him from that time on until the police arrived?

A. Until the police arrived, yes.

Q. What did you see him do?

A. He just stood out in front and kept wanting somebody to go get the police.

Q. Did you see how he held his gun?

A. He held it under his arm.

Q. Will you take this ruler and show the court how you saw him hold that gun?

A. He had it under his arm standing there, and once in a while he would reach up and rest his hand on the gun.

Q. Did you at any time see him point that gun at the men in the car?

A. No, I didn't.

Q. And did the man remain there until the police arrived?

A. Yes, sir.

Q. Did you see how many men there were in that car?

A. There were two men.

Q. Were they taken out of the car, or how were they taken from that place?



A. When the police arrived, they went up and had these fellows to get out, the police did, had them get out of the car, and then they left them get in the car, and one of the officers rode up with them. It was Mr. Kuntz, I believe.

975 Q. One of the city police?

A. One of the city police, yes.

Q. Did you hear this man you have described as having the gun make any threats during the period that he stood there?

A. Not that I heard.

Q. Can you identify the man that had the gun?

A. I believe I can.

The Court: Is there any question about that, gentlemen?

Mr. Heyl: I don't know.

Q. Was Mr. Kipling the man you met here the man— Was the man you met out in the hall when I talked with you this morning the man you saw at the car?

A. Yes.

The Court: These men were arrested?

Mr. Heyl: Yes.

The Court: What is the argument about? I don't see anything, unless there is some theory he pointed a gun. That would be a matter of rebuttal.

Mr. Heyl: Maybe it would.

The Court: We are saving time by hearing it now.

Mr. Knoblock: Is that all, Mr. Heyl?

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Wolf, what is your business down there?

A. Lunch room.

Q. How long have you been in that lunch room business there?

976 A. I have been there eight months.

Q. On this particular morning were you busy with some of your customers?

A. Well, off and on.

Q. And you didn't watch this man out there with the gun in his hand, isn't that right?

A. Not all times, but most of the time.

Q. How long have you been talking to Mr. Heyl about this out in the hall?

A. Mr. Heyl here?

Q. Yes.

A. That is the only man I have talked to.

Q. No one else knew you knew anything about this, is that right?

A. No.

Q. How did Mr. Heyl happen to find you in the hall this morning?

A. I was called to come down here.

Q. What did Mr. Heyl say to you in the hall?

A. Didn't say anything.

Q. Just stood out there and visited with you?

A. Yes.

Q. And you have been upstairs in the witness room?

A. How?

Q. You have been up in the witness room this morning?

A. How long? I just got in.

Q. Didn't you come down and go through one of the doors out in the hall, and stand there with Mr. Heyl for about just—ten minutes—just now?

A. Standing talking.

Q. You just visited with him that ten minutes?

977 Mr. Heyl: That isn't what he said. Ask him!

Q. Weren't you out there with him ten minutes, or about that time?

A. I don't believe I were.

Q. Wasn't Mr. Heyl there?

A. Yes.

Q. Wasn't Mr. Kipling there, too?

A. I couldn't say how long he was there.

Q. He was there several minutes?

A. Just a few minutes, and told me to wait.

Q. Wasn't Mr. Kipling there, too?

A. That's the police, in other words?

Q. No. Wasn't Mr. Kipling there?

A. The officer.

Q. Don't you know who Kipling is?

A. The heavy-set fellow.

Q. Did you see him on the day of January 2, 1942?

A. Yes.

Q. Was he out there just now with you and Heyl?

A. He wasn't talking to me.

Q. He was there, wasn't he?

A. He was there.

Q. You and Heyl were going over your testimony you were going to give in this court room right now?

A. No.

Q. You didn't say anything to him about your testimony you were going to give in here, is that right?

A. No.

The Court: Anything else?

Mr. Knoblock: That's all.

978

*Redirect Examination by Mr. Heyl.*

Q. Were you subpoenaed here this morning?

A. Yes, sir.

Q. When I talked to you out in the hall, I asked you to tell me what you saw?

Mr. Knoblock: I object to this leading.

The Court: He may answer.

A. That's right.

Q. And you told me what you have testified to here?

A. Yes.

Q. And that is all I did ask you?

A. That is all I did say, yes, what I saw.

Q. You weren't up in the witness room at all?

A. No.

*Recross Examination by Mr. Knoblock.*

Q. Do you know where the witness room is?

A. I couldn't tell you that because this is the first time I have been in here.

Q. How did Mr. Heyl know what you were going to say when you came up here?

Mr. Heyl: I object.

Q. How did Mr. Heyl know you knew anything about it?

Mr. Heyl: I want to object because there would have to be mental telepathy to the witness.

The Court: And you don't think you have it?

Mr. Heyl: No.

The Court: What he wants to know is: Did you tell anybody you had seen this down at your place of business or some place else? Did anybody ever try to get you to talk?

A. They tried to get me to talk.

The Court: Who was that?

A. I don't know who they were.

Mr. Heyl: That's all.

The Court: I think we will take a recess.

(Recess.)

ELMER L. SLATER, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Elliott.*

Q. What is your name?

A. Elmer L. Slater.

Q. And what is your business?

A. I am chief clerk in the traffic department.

Q. Of the Toledo, Peoria & Western Railroad?

A. Yes, sir.

Q. How long have you been such chief clerk.

A. Nine years.

Q. Are you familiar with the extent of the T. P. & W. road? Between what points it runs on the east and on the west?

A. Yes, sir.

Q. Tell us.

A. It runs from Effner on the east to Keokuk, Iowa, on the west.

980 Q. And is there also a main line from LaHarpe to Lomax?

A. There is.

Q. And that connects with the Santa Fe at Lomax?

A. Yes, sir.

Q. In your department, do you, or under your supervision is there kept, a record of cars that are handled by the road?

A. Yes, sir.

Q. And is that under your supervision?

A. Yes, sir.

Q. I will ask you if you have caused to be prepared, under your direction, a statement of car load shipments of war materials and supplies, including shipments of food stuffs for national relief shipped by or consigned to the United States government and associated nations, handled by the T. P. & W. during the year 1941?

A. Yes, I have.

Q. I will have it marked "Plaintiff's Exhibit 20", and state whether or not that is such statement that has been prepared by you and under your direction.

A. It is.

Q. Does that show the car number and the initials and the contents?

A. Yes.

Q. What does it show with reference to whether the cars moved were state or interstate?

A. It does.

Q. How does it define whether it is state or interstate?

A. The letter "I" designates interstate, the letter "S" state traffic.

Q. And that is a true and correct statement of cars 981 handled during those months?

A. Yes, sir.

Q. Is it made up by months?

A. Yes, sir.

Q. On the first sheet is there a recapitulation?

A. Yes.

Q. What is the total number of cars shown handled?

A. Three thousand nine hundred and thirty-two cars.

Q. And in the detail of the statement, it shows the commodity handled, does it?

A. Yes.

Mr. Elliott: I offer in evidence PLAINTIFF'S EXHIBIT NUMBER 20.

I might ask one or two more questions.

The Court: All right:

Q. Mr. Slater, I will ask you whether or not you are familiar with the general traffic that is handled by the T. P. & W., and has been during the past years?

A. Yes, sir.

Q. You may state whether the traffic is largely interstate or state.

A. The majority is interstate.

Q. The T. P. & W. handles traffic, what they call "overhead traffic", from roads on the west to roads on the east of Illinois, and from roads on the east of Illinois to roads on the west, doesn't it?

A. Yes.

Q. And the larger portion of its traffic is what is called "overhead traffic" or "interstate traffic"?

982 A. Yes, sir.

Mr. Elliott: That's all.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Slater, when was it that the T. P. & W. put an embargo on those materials?

A. Which materials?

Q. These war materials.

Mr. Elliott: I object to that. It is not cross examination. The Court: He may answer if he knows.

A. An embargo on all traffic?

Q. You have an embargo down there now, haven't you?

A. To some extent.

Q. And on what materials?

A. On overhead traffic.

Q. And what else?

A. Perishables and livestock.

Q. Anything else?

A. No, sir.

Q. When did that embargo go on?

A. The original embargo on December 6, 1941.

Q. And what did that include?

A. The original embargo included all freight.

Q. Then what modification has been made since that time?

A. It has been amended since then to permit the handling of freight from or to points on the T. P. & W. Railroad, excepting livestock and perishables.

Q. When was that done?

983 A. I don't recall the exact date.

Q. Is that embargo in effect at the present time?

A. It is.

Q. And the original embargo on December 6 was put into force by the T. P. & W. before any strike was called, isn't that right?

A. I can't answer that.

Q. You know the strike wasn't called until December 28, 1941, don't you?

Mr. Elliott: The original strike was called before that.

Q. The strike didn't actually take force until December 28, 1941, did it?

A. It did not.

Q. And the original strike wasn't even called on December 9, 1941, was it?

A. I don't know.

Q. Is some saving of time made on materials, shipped



through this part of the country by going over your line, rather than sending it through the Chicago yards?

A. I can't answer that.

Q. On east and west traffic?

A. Sir?

Q. On east and west traffic?

A. I can't answer that.

Q. Doesn't this embargo that is now imposed upon that road also include national defense materials?

A. As far as overhead traffic is concerned.

Mr. Knoblock: That's all.

Q. Do you know the reason the embargo was put on?

Mr. Knoblock: I object to that.

The Court: He may answer if he knows.

A. Yes.

Q. Tell us.

A. The embargo was put on from having shippers and their cars delayed.

Q. By reason of the strike?

A. By reason originally of a proposed or threatened strike.

Q. And after the original strike that was called for December 9 was postponed, the embargos were modified, were they not?

A. Yes, sir.

Mr. Knoblock: I object to that.

Q. And what is the reason that the embargos have still been kept on since the strike?

Mr. Knoblock: I object as a conclusion of this witness.

The Court: He may answer.

A. May I hear the question again?

Q. What is the reason the embargos are still on?

A. To still prevent any delay to through traffic.

Q. And the through traffic or overhead traffic which you have heretofore mentioned is now being sent over other roads to save delay on account of the strike on the T. P. & W., isn't it?

A. To the best of my knowledge.

Q. And that is your understanding as to why the embargo is still kept on?

A. Yes, sir.

985 Q. To prevent delays to shipments and damage to shipments?

A. Yes.

Mr. Knoblock: I object.

The Court: Sustained.

Mr. Elliott: That's all.

*Recross Examination by Mr. Knoblock.*

Q. That embargo was still on even since the restraining order issued by this court on January 3, 1942, isn't that right?

A. As far as overhead traffic is concerned.

Mr. Knoblock: That's all.

Mr. Elliott: That's all.

986 CHARLES GENDA, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Charles Genda.

Q. Where do you live?

A. Route 3, Peoria.

Q. I ask you to look at the photograph which was identified yesterday and marked "Plaintiff's Exhibit 4", and tell the court if your house appears on that photograph.

A. It does.

Q. Where is it?

A. Right there (pointing.)

Q. It appears at the upper right hand corner of this photograph, does it not?

A. Yes, sir.

Q. Beyond the tavern?

A. Yes, sir.

Q. Do you own the tavern that is shown in that photograph,—

A. I do.

Q. —Plaintiff's Exhibit 4?

A. Yes, sir.

Q. And the same tavern that is shown in Plaintiff's Exhibit 5?

A. Yes, sir.

Q. Were you at the tavern or on the premises or near the premises on the morning of January 2, 1942?

A. I couldn't give any reason to say that that particular day—

987 Q. Was it the day there was some trouble with the train there?

A. I was home.

Q. Was that the day?

A. Yes, sir.

Q. Before this occurred, were you on the railroad track?

A. Yes, sir.

Q. Tell what you were doing, and where you were going, and what happened.

A. I was going down to visit a friend of mine.

Q. Where is that friend, so we will know?

A. It's—Well, it lies beyond the railroad tracks. There are three tracks there, and his place is across the third track.

Q. Now, is one of the tracks shown on Exhibit 6?

A. Here is the Northwestern grade (indicating).

Q. You are pointing in the upper right hand corner of that Exhibit 6. That is the Northwestern, you say?

A. Yes, sir. It lies beyond that.

Q. And in going to your friend's place would you cross the track that's shown in Plaintiff's Exhibit 7?

A. That is the Rock Island. Yes, sir.

Q. That is the T. P. & W.?

A. Rock Island.

Mr. Knoblock: I object.

The Court: Answer whether he crosses that track.

Q. Shown in the picture, whosever railroad it is.

A. I crossed that, yes.

Q. Now, the same place where you crossed is shown in Plaintiff's Exhibits 4 and 5, is that true?

A. No, sir.

988 Q. Did you cross the railroad there?

A. Just beyond that.

Q. Which way? That would be west?

A. To the right; to the southwest.

Q. As you were crossing the track, what occurred?

A. I had just walked a short distance when a man approached me and, thinking it was a railroad official, I stopped and he told me I had better get off the track, which I did.

Q.—Where did you go?

A. I went into the tavern.

Q. Did you afterwards learn who that man was?

A. No; sir, I did not.

Q. All right!—Then did the man go back to the tavern with you?

A. No, he did not.

Mr. Knoblock: I object to the leading of this witness.

Q. Where did you go? You say you went to the tavern. Where did you go?

A. I went nearer the back end, standing by the stove.

Q. Did you observe any person come there after you got back to the tavern?

A. Well, there was several customers in there before, and there was another one came in afterward, I believe, before the trouble occurred.

Q. Did somebody buy a drink there?

A. Yes, sir.

Q. Who was it?

A. I don't know the man.

Q. What was said there with reference to this train?

Mr. Knoblock: I object, unless it is shown by whom.

989 The Court: Do you know who the man was?

A. No, sir, I did not.

The Court: Did you have a conversation with somebody with reference to the train?

A. Just what the man told me is all.

The Court: I think he may answer.

Q. What was said?

A. He just told me I had better keep off of the right-of-way for the time being, something might happen.

The Court: He answered that.

Q. Inside the tavern, what was said there about the train coming?

A. There was nothing in particular mentioned.

Q. What was said with reference to the men waiting for the train?

Mr. Knoblock: I object to that. He said nothing particular—

The Court: Whom did he say it to?

Mr. Heyl: He said it to him.

The Court: Was there some man in the tavern talking to you?

A. There was a number of them, and we were carrying on a conversation.

Q. Tell me the conversation as you told me out in the hall.

Mr. Knoblock: I object to this.

The Court: Yes, state if you had any conversation in the tavern.

A. As I mentioned before, the boys were having drinks (I think they just got their checks cashed), and this fellow, which evidently is the man you have in mind, volunteered to buy a drink.

Mr. Knoblock: I object to this.

990 The Court: Yes. What was said?

A. Nothing in particular.

Q. What was said, if anything, about the train being about due?

Mr. Knoblock: I object. He said nothing particular was said.

The Court: I think he can answer if anything was said.

A. Inside the tavern; nothing.

Q. Outside the tavern did you hear anything about it?

Mr. Knoblock: I object as having been gone over.

The Court: Did you have any other conversation with him?

A. I did not.

Q. Did you hear any conversation while you were sitting there?

A. I wasn't paying any attention.

Mr. Knoblock: I object.

Q. Isn't it a fact you stated to me out in the hall, when I asked you what you knew about this, that you heard this man say that the men were waiting out there for the train to come, and that the train came in a very few minutes after that? Isn't that a fact?

Mr. Knoblock: I object.

The Court: Yes, sustained as to what he told you.

Mr. Heyl: Under the authorities I have the right to call his attention to the statements he made to me. He is an adverse witness.

The Court: Objection sustained.

Q. Isn't it a fact you told me after you heard this statement made in the tavern, the train arrived immediately?

991 Mr. Knoblock: I object, "Isn't it a fact?"

The Court: Objection sustained as to what he told you.

Q. Did the train come shortly after you saw these men in the tavern?

A. There were men in the tavern at the time the train passed.

Q. But after you came into the tavern, after this man told you to keep off of the right-of-way, did the train come in soon after that?

A. Oh, it was a matter of a few minutes.

Q. And did something happen to that train?

A. Well, I can not say. It slowed up.

Q. Did you hear anything?

A. There was a commotion, yes.

Q. What did you hear?

A. Just a regular—Just a lot of noise is all I could say.

Q. What kind of noise?

Mr. Knoblock: I object.

The Court: He may answer if he heard anything.

A. Well, it would be hard to say.

Q. Can't you describe that noise?

A. The train makes more or less noise pulling heavily.

Q. Outside of the train noise?

A. It sounded like a rattling and a lot of conversation.

Q. Did you hear anything else?

A. No, sir.

Q. Were you out at all?

A. No, sir.

992 Q. Why didn't you go out?

Mr. Knoblock: I object.

The Court: Objection sustained.

A. I felt I had a right to stay where I pleased.

The Court: Sustained.

Q. You did not go out because you were warned by the men in the tavern this train was going to be bombed?

Mr. Knoblock: I object.

The Court: Objection sustained.

A. I make it my business—

Q. Did anybody tell you what was going to happen to that train?



Mr. Knoblock: I object. It has been gone over.

The Court: It has, but I will let him go ahead.

A. No, sir.

The Court: Cross-examine!

Mr. Knoblock: No cross-examination.

The Court: Call the next witness.

993 FRANK MUTCHLER, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Frank Mutchler.

Q. Where do you live?

A. Well, I live a little ways below where the dispute happened.

Q. That doesn't tell us anything. Where do you live with reference to the road that leads south from Bartonville? Do you know where Hollis is?

A. Yes.

Q. Do you live near Hollis?

A. Yes.

Q. Whereabouts in Hollis?

A. Scholl's.

Q. At Scholl's?

A. Yes.

Q. Were you on the road January 2, 1942, paralleling the T. P. & W. Railroad?

A. Yes.

Q. And did you or not see the train that had some difficulty down by the Elm Grove Tavern?

A. I did.

Q. And where were you?

A. Well, I was coming up the road going to the store.

Q. And how far were you from the train when you first saw it?

A. Oh, I would say about a hundred yards, or something.

994 Q. And what did you see? What was the first thing that you saw as you came up there?

A. I seen two cars pull over to the side of the road, and

some men jumped out and walked over to the side of the road and started hurling at the train.

Q. Hurling what?

A. I don't know what they was throwing.

Q. Did you see anything strike the train?

A. No; I heard the sound of something hit the train, though.

Q. Did one of these men leave immediately?

A. I don't remember seeing him.

Q. There were two men, would you say, or how many?

A. There was about a dozen men.

Q. What happened that as you approached this train, and got nearer to it? What did you see?

A. They kept on throwing, and there was about six shots fired from the train, and one of the men got hit.

Q. Where was he when you saw him? Did you see him at the time?

A. Yes.

Q. Where was he?

A. He was standing up there on the ridge where they were standing throwing.

Q. What was he doing?

A. He was throwing, too.

Q. Did you observe any steam coming from the engine on either side?

A. I didn't notice.

Q. Did you see any as it approached?

A. Yes, there was some as I came closer.

Q. You saw the engine as you came closer, is that it?

995 A. Yes.

Q. How close to the engine were you when it finally stopped?

A. Oh, let's see. I imagine I was about fifty yards away.

Q. Fifty yards away?

A. Yes.

Q. Which way were you from the engine?

A. I was coming up north.

Q. What I want to know is how far were you from the engine when the engine stopped.

A. About fifty yards.

Q. And you were then toward Hollis from the engine, is that right? Between the engine and Hollis, is that right?

A. Yes.

Q. Will you answer so we can hear you?

A. Yes.

Q. Were there any other people along the road there?

A. No, there was some cars that went by, but that was all.

Q. How many men altogether did you see there?

A. I imagine there was about a dozen.

Q. Did you see any coming out of this tavern just before this engine got there?

A. No, I didn't.

Mr. Heyl: That's all. You may cross-examine.

*Cross-Examination by Mr. Knoblock.*

Q. Frank, how old are you?

A. Sixteen.

Q. Were you just out in the hallway discussing this  
996 matter with Attorney Heyl?

A. Yes.

Q. And did he tell you what he wanted to know in here?

A. You mean—

Q. Did he tell you what he wanted?

A. He discussed some of it.

Q. I see. And you say you saw some shots fired from the engine of the train?

A. Yes, it came from the train.

Q. And, as far as you could tell, one of those shots hit one of the men there on the side of the road?

A. That's right.

Q. You don't know just where or when the steam was turned on in that train?

A. No, it hadn't stopped.

Q. The steam was still going as it went by you?

A. It didn't go by me as it was coming down.

Q. How far were you from these men standing there at the side of the road when you say they—the throwing started?

A. About fifty yards.

Q. You were about fifty yards from the men?

A. Yes.

Q. And you say the train stopped about fifty yards before it got to you?

A. Yes.

Q. And then the train stopped just about where the men were standing, is that right?

A. Yes.

Q. Honestly, Frank, you don't remember much about this, do you?

997 Mr. Heyl: I object to that.

The Court: Yes, to the form of the question.

Q. This isn't very clear to you, is it, Frank?

Mr. Heyl: I object as improper.

The Court: He may answer that.

A. It has been a while back.

Q. You don't remember these things very distinctly, do you?

Mr. Heyl: I object as improper.

The Court: He may answer.

A. I remember pretty well.

Q. You do?

A. Yes.

Q. Who have you talked to about this?

A. I talked to my parents is all.

Q. To your parents? Talk to anybody else?

A. No.

Q. Do you know how Mr. Heyl knew you knew something about it?

A. No, I don't.

Q. Did Mr. Heyl show you some pictures out in the hall regarding the scene of this accident?

A. Yes, he did.

Q. Did he show you on the pictures where the accident happened?

A. No. They showed where—the front of Elm Grove Tavern, but that happened a little south of it, and those pictures didn't show that.

Q. The pictures don't actually show where this incident occurred, do they?

Mr. Heyl: I object as improper cross-examination.

The Court: Objection sustained to that.

998 Q. About how far south of the Elm Grove Tavern did this dispute arise?

A. Oh, it was a small distance. I couldn't judge how far it was.

Q. You don't know any of the parties that you saw there, do you?

A. No, I don't.

Q. You didn't see— You didn't recognize any of the men that were throwing there, and you don't recognize them now, do you?

A. No.

Mr. Knoblock: I think that's all.

The Court: Call the next one.

999 WALLACE Y. WARE, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Elliott.*

Q. You may state your name.

A. Wallace Y. Ware.

Q. Where do you live?

A. 118 Callender, Peoria.

Q. And what is your business?

A. Chief engineer, Toledo, Peoria & Western Railroad.

Q. How long have you been chief engineer?

A. About five and a half years.

Q. Are you familiar with the entire road of the Toledo, Peoria & Western Railroad?

A. Yes.

Q. Are you familiar with the location of its yards in East Peoria?

A. Yes.

Q. And the tracks that are used going through Peoria?

A. Yes.

Q. On December 29, 1941, I will ask you if you left the yards in East Peoria to go to the hard road 24 and beyond that?

A. Yes.

Q. Did you travel over the lane that leads from the yards to the hard road 24?

A. Yes.

Q. Who was with you?

A. Mr. Hultgren.

Q. Who was driving the car?

1000 A. Mr. Hultgren.

Q. In which seat were you seated?

A. I was seated on his right.

Q. What, if anything,— About what time in the evening was that that you started out there?

A. About 8:45, as I remember.

Q. Does that lane have any name outside—aside from the lane leading to the T. P. & W.?

A. Sometimes called Heppe's lane.

Q. H-e-p-p-e-'s?

A. Yes.

Q. Is that part of the property of the Toledo, Peoria & Western Railroad?

A. Yes.

Q. As you were coming out of that lane, I will ask you what, if anything, you noticed in the roadway or along the lane?

A. As we were coming out, Mr. Hultgren remarked—

Mr. Knoblock: I object.

The Court: Objection sustained.

Mr. Elliott: Mr. Hultgren made some remarks. You can't tell what he said.

Q. What, if anything, did you observe?

A. I didn't observe anything unusual coming out of the lane.

Q. When you got to the end of the lane, what did you find?

A. The pickets were on duty at the end of the lane.

Q. Approximately how many?

A. I couldn't say as to that.

Q. Have you any judgment as to the number?

Mr. Knoblock: I object as having been asked and  
1001 answered.

The Court: He may answer.

A. I would say six or eight, anyway.

Q. Where were they with reference to the end of the lane?

A. Right at the end of the lane on each side of the car as we pulled up and stopped.

Q. Did they say anything to you as you stopped?

A. Not that I recollect.

Q. From where did you go there?

A. We went down to the west end of the yard, which is about three-quarters of a mile.

Q. Is that near what is known as the Lake Erie junction?

A. Yes.

Q. And the viaduct?

A. And the viaduct, yes.

Q. How long were you gone before you came back to the lane?

A. Oh, around ten or fifteen minutes.

Q. When you got back to the end of the lane, were these same pickets there?



A. There were some pickets there. I couldn't say that they were the same.

Q. Did you or not stop there?

A. We stopped just after we entered the lane.

Q. What was the occasion of your stopping?

A. We saw some roofing nails spread over the entire width of the lane there for some distance down the lane.

Q. About how far, in feet, down the lane were these roofing nails spread?

A. I would estimate they started about a hundred 1002 and fifty feet down the lane, and extended probably two hundred feet.

Q. How many nails? That is, how thick were the nails spread, if you can give an estimate?

A. They were thick. They covered the entire width of the lane for this distance in there.

Q. What was the appearance of those as you entered in there, from your headlights?

A. You could see them shine in the headlights.

Q. What, if anything, was done before you drove on through?

A. We drove up to the—close as we could get and keep out of the nails and stopped the car, and Mr. Hultgren went down to the yard to get the broom to sweep it so we could get on through.

Q. Did he sweep it ahead of you?

A. Yes.

Q. Were those nails spread over there in the quantity that you have mentioned as you came out of the lane fifteen minutes before?

A. I didn't see them.

Q. Did you have your headlights on as you were coming out?

A. Yes, sir.

Q. You had the same headlights on as you started back into the lane?

A. Yes, sir.

Q. You did not observe them as you came out, but did as you went in?

A. Yes.

Q. How long did it take to sweep those nails off?

Mr. Knoblock: I object to that.

The Court: I think he may answer.

1003 Q. How long did it take Mr. Hultgren to sweep the nails off for you to go ahead?

A. Oh, probably fifteen minutes.

Q. What did you do as he was sweeping them off?

A. Well, I kicked some of the scattered ones out of the way, and drove the car on up to give a better light so we could get them all out.

Q. You did that so you wouldn't have a puncture?

A. Yes.

Mr. Knoblock: I object; immaterial.

The Court: Yes.

Q. Mr. Ware, you say you are familiar with the road of the T. P. & W. and the various tracks that it uses, including its yards?

A. Yes.

Q. From what point to what point does the railroad extend?

A. From the Indiana state line at Effner to Keokuk, Iowa.

Mr. Knoblock: I think this is repetition.

Mr. Elliott: This is preliminary for another matter.

The Court: Shorten it up as much as you can.

Q. I will ask you if you have prepared a plat showing the trains that moved on Monday, December 29, Tuesday, December 30, Wednesday, December 31, January 1, and Friday, the 2nd, and Sunday, January 4, and Monday, January 5.

A. Yes.

Q. From what data did you prepare this plat?

A. From our records in the office.

Q. You may look at the plat which I will now ask the reporter to mark "Plaintiff's Exhibit 21", and state what the top line indicates on this plat.

1004 A. The heavy line indicates the T. P. & W. Railroad from Effner to Keokuk and a branch to Warsaw and a branch from LaHarpe to Lomax.

Q. The left edge of the plat is the westerly edge, is it?

A. Yes.

Q. Westerly end of the road?

A. Yes.

Q. Are the county lines shown on that plat?

A. Yes.

Q. Now, coming down to the next line, taking Monday, the 29th: In what way is the daytime and the nighttime indicated by days?

A. The nighttime is shaded and the daylight shows white on the plat, clear white.

Q. What do the lines on those respective dates indicate?

A. The movements of trains from the yard to Effner and Hamilton.

Q. And are the numbers of the trains, as shown upon those respective dates, shown?

A. Yes.

Q. Whether they are east-bound or west-bound?

A. Yes.

Q. And what do the red spots on the first, or top, line indicate?

A. The red spots indicate locations where there were acts of violence or threats, or some interference with the operation of the railroad.

Q. Is that also true as to the red spots on the lines of the respective dates?

A. Yes, and it shows the approximate time of the acts.

Q. Were those taken from the records of the company?

A. Yes, sir.

1005 Q. And you have made this plat as indicating the movement of those trains and the approximate time when reports of acts were shown?

A. Yes.

Q. Is that true and correct from the reports that you had of the company?

A. Yes.

Q. The details are shown in the column at the left hand side?

A. Yes.

Q. Near the middle of the plat there are several lines. Is that the location of the yards?

A. Yes, and the movements of the yard engines.

Q. Were there any trains moved at all on January 3?

A. No train movements on the 3rd.

Q. And the black lines indicate the movements on the other days from December 29 to and including Monday, January 5, but excluding Saturday, January 3?

A. Yes.

Mr. Elliott: I offer in evidence the plat marked PLAINTIFF'S EXHIBIT 21.

Mr. Knoblock: We object to it for the sole reason that it unnecessarily encumbers the record.

The Court: Is that all with this witness?

Mr. Elliott: Yes.

The Court: You may cross-examine.

Mr. Elliott: There is one other thing I want.

Q. Mr. Ware, I will ask you if you are familiar with the greasing of rails? The flanges of rails?

A. Yes.

Q. You may explain what sort of greasing it put 1006 on the flanges of the rails.

A. Well, there is a heavy grease used to grease the wheel, flanges of the wheel, as they pass over this machine.

Q. And does that in any way grease the top of the rails?

A. Not if it's working properly.

Q. What sort of grease is used, and what is the purpose of greasing the flanges?

A. It's a heavy grease, and it is used to reduce the wear on the wheels and the rail, and also to permit heavier tonnage to be handled up hills.

Q. Do you know the effect of putting grease on the top of the rail?

A. Yes. That destroys adhesion. The locomotive depends upon adhesion to pull the load behind it.

Q. In other words, it would destroy traction?

A. Yes.

Q. Take a train going uphill: If the top of the rail is greased, do you know what the effect would be,—

Mr. Knoblock: I object to that.

Q. —from your experience?

The Court: I think it is self-evident, but he may answer.

Mr. Knoblock: The amount of grease would have some effect.

A. It would tend to stall the train.

Q. What about the greasing of the rail on a curve on a hill? What would be the effect of that on a train?

Mr. Knoblock: Same objection.

The Court: I think he may answer.

A. On top of the rail?

1007 Q. Yes.

A. That would have the same effect. It would tend to slow down and maybe stall the train.

Q. Would it or not have the possible or probable effect of derailing on a curve?

Mr. Knoblock: I object to what the possibility or probability might be.

The Court: He may answer. Answer whether it would or not.

A. I couldn't answer that definitely.

Q. It would depend upon how fast the train was going, and how hard it was working, wouldn't it?

A. Yes.

Mr. Knoblock: I object.

The Court: Objection sustained.

Q. I will ask you if there was on December 29, and up to and past January 3, 1942, any greasing machine at the New Philadelphia hill?

A. No.

Q. Had there been for sometime previous to that?

A. There had not been for sometime.

Q. That matter is one of the matters under your jurisdiction, is it not?

A. Yes.

Q. Mr. Ware, have you observed what the effect of a switch being half open has upon the movement of a train?

Mr. Knoblock: I object as having been asked and answered by other witnesses.

1008 The Court: I think it has been answered by a lot of witnesses, but he may answer.

A. It is the most dangerous position of a switch—to cause the derailment of a train.

Q. To have it half open?

A. Yes.

Mr. Elliott: That's all.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Ware, on December 29, 1941, when you left the yards with Mr. Hultgren, you do not know nor did you see anyone place any nails or any other objects in the lane that you have described?

A. I didn't see them.

Q. And you have no idea who did it?

A. No.

Mr. Knoblock: That's all.

The Court: There are two exhibits which have been offered and not passed upon, this and the preceding one, which had to do with the amount of business transacted by this railroad over a period of time, showing state and interstate business.

You haven't made your objection to the first. Have you any objection to them?

Mr. Knoblock: I object to both as unnecessarily encumbering the record, and not proving any issues.

The Court: I think they may be admitted, both of them.

1009 ERNEST W. STERNBERG, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Ernest W. Sternberg.

Q. Where do you live?

A. Washington, Illinois.

Q. And where do you work?

A. M. Ebert Company.

Q. You were subpoenaed off of your job, weren't you, this morning?

A. Yes, sir.

Q. Where are you working in Peoria?

A. At the Hiram Walker distillery.

Q. And were you in the intersection of the lane leading to the T. P. & W. yards from Route 24 on the night that a man was injured there?

A. Yes, sir.

Q. Were you driving the truck that collided with Mr. Thompson's car?

A. Yes, sir, I guess that's his name. I never knew the gentleman's name.

Q. Was there anyone with you in the truck?

A. Roy Trowbridge.

Q. When that happened, did you see Mr. Thompson, driver of the car?

A. Yes, sir.

Q. Where did you see him?

A. Right out in front of my car by the lights.

1010 Q. Where was his car?

A. He pulled his car on west of the entrance, right at the cemetery entrance, along in there some place, as near as I can tell.

Q. That is west of the impact?

A. That's right.

Q. Where did you come together? Where did you collide? At what point on the road?

A. Right at the road that comes up from the T. P. & W.

Q. That is the lane?

A. Yes, that is the lane.

Q. Had you observed pickets there before that time?



A. I seen somebody along in there.

Q. While Mr. Thompson was talking to you after the collision, and after the two vehicles were stopped, what occurred?

A. Well, all I heard was someone say, "Get him!" I couldn't see. It was dark toward where the car was.

Q. Whose car?

A. Thompson's.

Q. Did you observe some men up in that locality?

A. Yes, I seen some up in there.

Q. Is that all you saw and heard?

A. That's all I saw and heard.

Q. Did you go up there?

A. No, I did not.

Mr. Heyl: That's all.

1011 *Cross-Examination by Mr. Knoblock.*

Q. Did you see Mr. Thompson's car in plain view as he came out of that lane?

A. Well, it was so close to me that I was pretty near there when he came out.

Q. And did Mr. Thompson stop before he came on the highway there?

Mr. Heyl: I object; not material, and not cross-examination.

The Court: I don't think we ought to try this accident here.

Is that all with this witness?

1012 ROY TROWBRIDGE, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Roy Trowbridge.

Q. Where do you live?

A. Washington.

Q. And what is your business or occupation?

A. Working with a well machine.

Q. For Mike Ebert?

A. Yes, sir.

Q. Were you subpoenaed off of your job this morning?

A. Yes, sir.

Q. And came here with the Marshal in response to a subpoena?

A. Yes.

Q. You were riding with Mr. E. W. Sternberg when he collided with Thompson's car at the lane—

A. Yes, sir.

Q. —near the T. P. & W. property?

A. Yes, sir.

Q. Tell the court what you saw there that night, and heard.

A. We was going toward Washington going east. There was a car drove out of the lane coming from the T. P. & W. roundhouse, and I seen the light, and I thought first he was going to stop, but he didn't.

Mr. Knoblock: I object.

Q. After that, what happened?

1013 The Court: Tell what happened.

Mr. Knoblock: I withdraw the objection.

The Court: All right!

A. Then he hit the car, I would say it was toward the front door, so we pulled off the side of the road, and Mr. Sternberg got out, and about that time the man in the car we hit come down and pulled a billfold out of his pocket, and gave him the number.

Q. Then what happened?

A. The car we hit stopped up toward the cemetery road, and I was in front of the car watching Ernie write down the number, and there was kind of a commotion up there, and I just glanced up and there was two or three men went across the road. I heard them say, "Get him!" and I never paid no more attention to it. That is all I know about it.

Q. Where did they go with reference to the car that hit you that was parked up there? Did they go toward that car, or where were they going?

A. I think they was just crossing the road.

Q. Going toward that car?

A. As far as I could see. It was dark.

Q. You didn't go back up there?

A. No.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

Mr. Heyl: I want to recall Mr. Kipling.

1014 HAROLD E. KIPLING, recalled, having been previously sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. You are the same Harold Kipling that testified yesterday?

A. Yes, sir.

Q. I will ask you if you were present when some photographs were made yesterday by Mr. Barbee?

A. Yes, sir.

Q. And who directed you to have those photographs taken?

A. Mr. Heyl.

Q. And did you see all the photographs taken?

A. Yes, sir.

Q. Were you present all the time?

A. Yes, sir.

Q. I will ask you to look at Plaintiff's Exhibit 3, and state to the court if you recognize that view.

A. That is the switch at 61 track across from Allied Mills.

Q. Does that show the place that you referred to in your testimony the other day as being the place where the train stopped in switching for the Allied Mills?

A. Setting some cars out on the 61 track. That's the place.

Q. What happened at the switch that is shown in that photograph?

A. That's the place where John Gimming drove up behind me, got out of the car. Arthur Brewster was in the car. Two special agents were standing here at the switch when the brakeman that was doing the setting out, and the conductor. George Kneisley came up waving a club.

1015 Mr. Knoblock: Wait a minute!

The Court: Sustained.

Mr. Heyl: I am trying to identify the spot.

The Court: I don't think we ought to rehearse the testimony.

Q. Is that view shown in the photograph in the same condition it was on January 2?

A. All except the cars and the men were there.

Q. Outside of the cars and the men there, you observe no changes in the condition?

A. No, sir.

Q. Is that correct?

A. That's correct.

Mr. Heyl: I reoffer that photograph in evidence.

The Court: Hasn't it been admitted?

Mr. Heyl: They were identified, and I said I would connect them up by showing—

The Court: Is this all?

Mr. Heyl: I will identify them all, and offer them at once.

Q. Plaintiff's Exhibit 4, what does that show, Mr. Kipling?

A. That was the spot, or part of the spot, where the train was stoned and a bottle of gasoline was thrown into the cab.

Mr. Knoblock: I object to that.

The Court: Yes. For the purpose of the record, that isn't necessary.

Is that the spot you testified to before that occurrence took place?

A. Yes.

1016 The Court: And that shows all of the surroundings of that particular place?

A. That shows part of the surroundings.

Q. Are the conditions the same as the day this occurred?

A. Yes.

Q. Except the train and the men are absent?

A. Except the train and the men are absent.

Q. Look at Plaintiff's Exhibit 5, and state what that shows.

A. That shows the spot where the stoning—

Mr. Knoblock: I object.

A. That shows the spot where—

The Court: Where?

A. —the train passed.

The Court: When?

A. January 2. On January 2 the men stood there at this spot (indicating):

The Court: The one you testified to that was down at the Allied Mills, or below the Allied Mills?

A. Below the Allied Mills.

Q. Is that the spot where the train you testified to—

where the train was stoned, and where the gasoline was thrown?

Mr. Knoblock: I object.

A. Yes, sir, that is the spot.

The Court: I think that is proper. He has to identify it some way.

Q. Look at Exhibit 6, and state what that shows.

A. That shows the spot where the train was stoned and the gasoline thrown.

1017 The Court: Is that the same spot as the last one?

Mr. Heyl: Different view of the same spot.

A. Different view.

Q. I will ask you to look at Exhibit 7, and state if that is a view of the same locality?

A. Yes, sir, it is.

Q. Will you tell the court, if you can, where Lucas stood in that view when he threw the bottle.

A. Lucas stood about fifteen feet south of the end of this guard rail.

Mr. Knoblock: What exhibit is that?

Mr. Heyl: Exhibit 7.

Q. Is that the guard rail that is shown in the upper left hand corner of the picture?

A. That's the guard rail.

Q. That is the guard rail on the highway, is it?

A. Yes, sir, that is the guard rail on the highway. Lucas stood—this is south— He stood fifteen feet north. I change that statement.

Q. North?

A. Fifteen feet from the south end of this guard rail, just about fifteen to twenty feet approximately. I don't know exactly.

Q. That would be back toward Peoria?

A. Yes.

Q. You mean north on the highway toward Peoria?

A. Yes.

Q. He was between the highway and the guard rail, is that right?

A. Between the cement—the route or the main road and the guard rail.

1018 Q. I want you to state, if you can, about the height of this bank that is shown in Plaintiff's Exhibit 7.

A. I would say that bank was from seven to ten feet high.

Q. From the rail?

A. From the rail to the shoulder of the road.

Q. And this tavern that's shown in Plaintiff's Exhibit 4, is that the Elm Grove Tavern?

A. Yes, sir, it is.

Mr. Heyl: We reoffer Plaintiff's Exhibit 3, 4, 5, 6 and 7.

The Court: Cross-examine!

*Cross-Examination by Mr. Knoblock.*

Q. Now, Mr. Kipling, you say Lucas was standing in Plaintiff's Exhibit 7 fifteen feet away from which end of that guard rail?

A. From the south end toward the north; from the south end of the guard rail north.

Q. The guard rail is not shown in any way in Plaintiff's Exhibit 5, is it?

A. I don't know. I will have to see the picture.

Mr. Heyl: Let him see it.

Mr. Knoblock: No further cross-examination.

Mr. Heyl: Is that all?

The Court: We might as well pass on these.

Any objection to these exhibits?

Mr. Knoblock: I don't believe so.

The Court: They may be admitted.

1019 CLARA ALBEE, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Elliott.*

Q. You may state your name, Mrs. Albee.

A. Mrs. Clara Albee.

Q. A-l-b-e-e, is it?

A. Yes, sir.

Q. Where do you reside?

A. At the home of Mr. and Mrs. George P. McNear,  
202 Moss.

Q. In the City of Peoria?

A. Yes.

Q. That's this Mr. McNear who is seated back of me?

A. Yes.



Q. Were you at the home of Mr. McNear shortly after noon on January 5?

A. I was there all day.

Q. Was there a telephone call?

A. There was.

Q. About what time after noon was there a telephone call?

A. About 3:15 or 20.

Q. Did you answer the telephone?

A. Yes, sir.

Q. Did the party who called say who he was?

A. He did not.

Q. Will you please tell the conversation that this man—or what this man said?

Mr. Knoblock: I object to this.

Mr. Elliott: I want to say, Your Honor, the 1020 threat was made as to Mr. McNear.

The Court: I think she may answer.

Mr. Knoblock: This matter has been in the newspaper for several days, and what some crank may have done I don't think it is material.

The Court: That may be true, and I am saying I will pay little attention, and perhaps other courts would, but I think you have a right to the testimony. There isn't any jury, and you won't be harmed by it.

Q. Go ahead and tell what the conversation was.

A. I answered the telephone, and he wanted to know—when I said, "Hello", he said, "Hello, scab", and I said, "What did you say?" and he repeated it. He said, "Is this George P. McNear's residence?" I said, "Yes, it is." He said, "Is Mr. McNear here?" I said, "He is working." He said, "Does George P. McNear ever work?" He said, "Scab", and then he used some vile language which I am not going to repeat, and he said, "If he doesn't watch out, he is going to get his head blown off some of these days", and I hung up on him. I didn't hear anything else.

Q. When you say he said he was going to get his head blown off, was that vile language?

A. Yes, sir, it was.

Q. And so vile you don't want to repeat it?

A. Yes.

Q. Later in the afternoon was there another telephone call?

A. Yes, there was.

Q. About how long after this first telephone call?

A. This last telephone call was about 5:30, as near as I can remember.

Q. Tell whether that was a man or woman that called.

1021 A. It was a man.

Mr. Knoblock: In order to keep the record straight, I move that answer be stricken.

Q. Tell us what the second telephone call was, what was said, and what you said.

A. He asked if it was Mrs. McNear answering. I said, "No." He said, "Is she there?" I said, "No." He said, "Is Mr. McNear there?" and I said, "No", and he told me one of Mr. McNears special agents was badly injured, and he wanted him to come over immediately.

Q. Wanted who?

A. Mr. McNear.

Q. What did you say to that?

A. I asked him if he called the office because I thought it probably was true. He said he hadn't, and later I called the office.

Q. To report the incident to the office?

A. To report it, yes, sir, and the girl that answered told me—

Q. What she told you would not be proper, but did you report the incident to Mr. McNear's office?

A. I did.

Q. Did you inquire—have them make inquiry as to whether or not one of the agents had been hurt?

A. They did.

Q. Was a report later returned to you?

A. It was.

Q. Had there been any?

A. No, there hadn't.

Mr. Elliott: That's all. Wait!

Q. Had there been anybody injured, I meant?

1022 A. No.

*Cross-Examination by Mr. Knoblock.*

Q. Mrs. Albee, you absolutely have no idea who made that call on January 5, 1942, do you?

A. No.

Q. You don't know where the call came from in the City of Peoria, do you?

A. No.

Q. You don't know whether it came from any of the striking employees of Mr. McNear's company or not, would you?

A. I wouldn't have any way of finding out.

Q. All you know is a random telephone call came in and you answered it, and these statements were made?

A. That's all.

Mr. Knoblock: That's all.

The Court: Do you make any motion at this time?

Mr. Knoblock: I make a motion to strike all the testimony.

The Court: The motion will be sustained.

I'll tell you why it is sustained. The same thing has happened to me when a drunk called up and saying, "If you don't do so and so, something is going to happen." I didn't take enough interest to find out.

Mr. Heyl: The court has held in this class of cases, and in the Circuit Court of Appeals has held, where you show where threats have been made, telephone conversations to officers and representatives of the company, those are competent.

The Court: I realize that, but it wasn't a threat.

Mr. Heyl: Yes.

The Court: They said someone was hurt in the yards.

Mr. Heyl: The first one said he would get his head blown off.

The Court: I am going to sustain the objection. If it's appealed on either side, your record goes up. I don't think it is material, but that doesn't prevent you gentlemen from showing whatever you wanted.

1024 STEVE BURBAGE, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Steve Burbage.

Q. Where do you live, Mr. Burbage?

A. Big Hollow Road.

Q. Peoria?

A. Yes.

Q. What is your business or occupation?

A. Well, I was policeman and guard.

Q. For the T. P. & W.?

A. Yes, sir.

Q. What did you do before that?

A. I was a police down at LeTourneau's.

Q. Where?

A. At LeTourneau's.

Q. How long?

A. About four years.

Q. You were employed by Mr. Kipling when this strike occurred as a special agent, were you not?

A. Yes, sir.

Q. Were you on the train that left Peoria for Keokuk, Iowa, on January 2, 1941?

A. I was.

Q. 1942, rather. Where were you riding?

A. I was on the engine.

1025 Q. And were you present when the train was stopped near the Elm Grove Tavern?

A. I was.

Q. Where were you at that time on the engine?

A. I was between the coal tender and the engine.

Q. And what did you observe there? Anything?

A. Lot of rocks throwed, stones and gasoline.

Q. Did you see the gasoline?

A. It exploded right in the engine where I was.

Q. Did you see it thrown?

A. No, I never seen it.

Q. What, if anything, did you do there?

A. What?

Q. What, if anything, did you do while that was going on, the throwing of the stones and the throwing of the gasoline and so on? What did you do?

A. First, I tried to put the fire out. I found out I was getting it on me and the fire hose was froze up, couldn't get the water to run, and I tried to smother it out and stones kept coming in so fast that we didn't have time, so about the only thing I knew was to pull my gun and shoot, and I shot six times down at the ground.

Q. On which side of the engine?

A. On the right hand side.

Mr. Knoblock: Which side?

A. On the right hand side.

Q. What did you aim at?

A. Right down below the steps.

Q. Did you point the gun at any person?

1026 A. Oh, no.

Q. And at the time you shot, where was the engine?

A. Where was the engine?

Q. Yes.

A. It was on the railroad track.

Q. Where, with reference to this bank? Was it traveling along or standing or what?

A. Yes, it was traveling.

Q. Could you identify by a photograph about the position of this engine when you shot? Look at this photograph, Plaintiff's Exhibit 7. Can you state from there about where the engine was when you shot at the ground?

A. No, I don't believe I could.

Q. Could you from Plaintiff's Exhibit 4?

A. It was right in this district some place.

Q. What?

A. It was right around in there.

Q. Right around in the vicinity shown in Plaintiff's Exhibit 4, is that what you mean?

A. Right in that vicinity.

Mr. Knoblock: I though he said he couldn't identify Plaintiff's Exhibit 4.

Mr. Heyl: No, he identified Plaintiff's Exhibit 7.

That's all.

The Court: Cross-examine.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Burbage, what day did you go to work for the T. P. & W.?

1027 A. January 1, 1942.

Q. And who hired you?

A. Kipling.

Q. And when did Kipling come to you and ask you to go to work?

A. Well, let's see. I think it was the 29th. I am not sure.

Q. 29th of December?

A. 29th of December.

Q. Then you reported to work on the 1st day of January? Did you ride on a train that day?

A. Yes.

Q. On the 1st?

A. Yes.

Q. Where did that train go?

A. I was just riding around the yards.

Q. Who was running the train on the 1st?

A. Oh, I just make one trip. I don't know who it was.

Q. Who was the engineer?

A. I don't know.

Q. Who was the engineer on January 2?

A. Gulick.

Q. Who was the fireman?

A. McAvoy.

Q. Who was the conductor?

A. I don't know.

Q. Who was the assistant fireman?

A. The who?

Q. The student fireman.

A. The student fireman?

Q. Yes.

1028 A. I think it was O'Brien. I am not sure.

Q. How many special agents were riding in this cab on this day, January 2, 1942?

A. I couldn't say.

Q. You can't recall whether you were the only special agent on that train or not?

A. No.

Q. There was only just Gulick and O'Brien and McAvoy and then this other member of the engine crew that you don't know and yourself, is that true?

A. I didn't know them.

Q. Just five of you on there, is that right?

A. There was more than that on it.

Q. What were the other men doing?

A. I don't know. I didn't have time to look at them.

Q. You looked at them all the way from the East Peoria yards to Hollis?

A. They was just riding then.

Q. You had an opportunity to look at them?

A. Yes.

Q. Did you see any of the rest of them in there carrying guns?

A. I didn't see any.

Q. You didn't see anybody's gun but your own?

A. No.

Q. What kind of gun?

A. Smith & Wesson.

Q. What calibre?



A. 38.

Q. Who gave it to you?

1029 A. Kipling.

Q. On what day?

A. The 2nd, the same morning I left.

Q. Did you carry a deputy sheriff's commission at that time to carry a gun?

A. Yes.

Q. From what county?

A. Peoria County.

Q. When were you so commissioned?

A. I was commissioned this last time the 1st day, 1st day of January.

Q. You were commissioned the 1st day of January, 1942?

A. Yes.

Q. Who commissioned you?

A. Stonebock.

Q. Where were you standing when you started to shoot?

A. I was standing up against the coal tender looking out in front.

Q. You were shooting through the curtain?

A. No. I was shooting down between, at the bottom between the curtain and the bottom.

Q. Did you see any other special agent shooting at that time?

A. I never noticed.

Q. Did you hear any instructions from the fireman or engineer, "Start shooting, boys"?

A. I heard a lot of screaming.

Q. Did you hear that statement, "Start shooting, boys"?

Mr. Heyl: I object to that. Let him answer the former question.

Mr. Knoblock: That is the former question.  
1030 The Court: Did you hear that statement?

Q. Did you hear that statement from the engineer and fireman?

A. I heard it, but I don't know who it come from.

Q. Then you started to shoot?

A. Yes.

Q. And you saw exactly what you shot, is that it?

A. Yes, sir.

Q. How high is that bank along there?

A. I imagine it's about eight foot.

Q. And you shot right at the base of the bank, is that right?

A. I shot right at the base of the railroad track, right down.

Q. How fast was the train moving along that place? South of the Allied Mills there?

A. I imagine about ten, fifteen miles.

Q. Do you remember the blow-off cocks being put on?

A. I remember hearing it, yes.

Q. You recall it was the right one?

A. It was what?

Q. It was the right blow-off cock?

A. It was on the left hand side.

Q. Did you know that engine had one on the right?

A. No, I never knew it.

Q. The blow-off cock went off before anything happened? That came first, isn't that right?

A. Yes.

Q. After that occurred, some of these stones and rocks began coming, is that right?

A. What?

Q. After the blow-off cock was put on, then some 1031 of the stones and rocks started coming?

A. Stones started coming all the way down there.

Q. There was a constant rain of stones from the Allied Mills down to this place where you shot?

A. There was a sprinkle. That was a sprinkle. Then all along, and there came the heavy brigade.

Q. All along the track there was a constant sprinkling of stones?

A. Yes.

Q. Where you shot, that was almost opposite the Elm Gate Tavern, isn't that true?

A. I wouldn't say for sure. I would think it was. I was afraid to look out for fear I would get stoned.

Mr. Knoblock: I disclaim that.

Mr. Heyl: That is part of his answer.

Q. You said, as I recall, Plaintiff's Exhibit 4,—you said showed about the vicinity where you shot?

A. I imagine. I seen that tavern.

Q. Does that picture, Exhibit 4, include Elm Grove Tavern in there? Take a look at it.

Mr. Heyl: It shows for itself.

A. Elm Grove, yes.

Q. From the point at the Allied Mills all the way down there, you say, there was a steady trickle of rocks coming?

A. Yes.

Q. How far would you say that distance was?

A. Oh, I don't know.

Q. What is your best judgment?

A. I am a poor guesser.

Q. You are? Did you recall getting off the engine 1032 at the Allied Mills?

A. I seen two fellows get off there right close to the Allied Mills.

Q. Those were two special agents, were they?

A. No, I don't know.

Q. You don't know?

A. I didn't know a special agent from the railroad switchman.

Q. You don't know yet whether there were any special agents on that train besides yourself?

A. I know now.

Q. You know now? You have been told that by somebody else?

A. No, I know them now.

Q. Before you were out at LeTourneau's, you used to drive a cab around Peoria, didn't you?

A. Yes.

Q. How many years were you in that business?

A. About one year.

Q. Who did you drive for?

A. I drove Eddie's Cab, drove Yellow Cab.

Q. The curtain on the right side of that engine there, that was drawn at the time, wasn't it?

A. Drawn?

Q. Drawn, yes. Closed?

A. Yes.

Q. It had been closed that way from the Allied Mills plant all the way down to where this incident took place, isn't that true?

A. That's right.

Q. Up at the Allied Mills plant, you observed the blow-off cock being turned on, too, didn't you?

1033 A. No.

Q. In fact, it wasn't done?

A. I never heard nothing.

Q. That makes quite a bit of noise, does it?

A. It makes quite a bit.

Q. Did you ever get off of the cab of the engine up there?

A. I never did.

Mr. Knoblock: I think that is all.

Mr. Heyl: One question.

*Redirect Examination by Mr. Heyl.*

Q. How long have you been a deputy sheriff in Peoria County?

A. Well, I have been deputy sheriff between seven and eight years.

Q. And you were again commissioned deputy sheriff after you took this job as special agent,—

A. Yes.

Q. —is that right?

A. That's right.

Q. By the sheriff of this county?

A. That's right.

Q. And you live in this county?

A. I do.

Q. Now, did you shoot before or after the gasoline was thrown into the engine?

Mr. Knoblock: I object to that.

The Court: Yes, he testified.

Mr. Heyl: I didn't hear it.

1034 The Court: He testified in direct examination after the fire he started shooting.

Mr. Heyl: I missed it. All right! That's all.

*Recross Examination by Mr. Knoblock.*

Q. You have never received any pay from the deputy sheriff's office, have you?

A. Never have.

Q. In fact, it has been about a year or so you were a cab driver, isn't that right?

Mr. Heyl: I object.

Q. You were a deputy sheriff even when you were a cab driver, weren't you?

A. No.

The Court: We will stop at this point.

We will recess until 2 o'clock this afternoon.

Trial Recessed at 12:30 o'clock P. M.

1035 Trial Resumed at 2 o'clock P. M.

The Court: Call the witness.

GEORGE P. McNEAR, JR., called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. You may state your name.

A. George P. McNear, Jr.

Q. Where do you live?

A. 202 Moss Avenue.

Q. What is your age?

A. Fifty.

Q. What is your business or occupation?

A. President, Toledo, Peoria & Western Railroad.

Q. How long have you been president of the Toledo, Peoria & Western Railroad?

A. Since 1927.

Q. And you are active in the management of that business?

A. Yes, sir.

Q. Now, I want to ask you first with reference to the question that has been raised in this case as to the payment of a \$10.00 bonus. Who promised that bonus?

A. I did.

Q. To whom?

1036 A. Superintendent Best.

Q. And what was the authorization?

A. Well, the authorization came about by reason of the threats which had been conveyed to us before the strike started.

Mr. Knoblock: Wait just a minute? I object to that.

The Court: No, I think that is proper, the reason.

A. There had been threats conveyed to us before the strike started that no train would ever reach the Illinois River bridge going west, and no train get to Washington going east.

Mr. Knoblock: Is he reading?

A. Yes.

Mr. Heyl: This is his testimony.

Mr. Knoblock: Did you write it for him?

Mr. Heyl: No, sir, he wrote it himself. Nobody has to write for him.

The Court: He has a right to read from that. You can examine the memorandum, if you desire, on cross examination. I think that is proper.

A: On account of this extra hazard, I authorized Superintendent Best to pay each person who operated the trains a bonus of \$10.00 per day for the first few days of the strike, in addition to their regular pay, as some compensation for the risk they were willing to assume.

Q. And now, Mr. McNear, prior to December 29, 1941, did you or not hire any extra guards or any other employees to operate this railroad?

A. We did not.

Q. Now, on Sunday, December 28, 1941,—

Mr. Knoblock: December what?

1037 Mr. Heyl: December 28, 1941.

Q. —what, if anything, did you do with reference to authorizing the employment of special agents?

A. When the strike became effective at 6 P. M. on December 28, I authorized Kipling to put on a few more special agents from the local territory, most of whom he said he knew, and on Monday, December 29, we advertised for men to run the trains?

Q. That is, for additional employees?

A. Yes, sir.

Q. Now, what did you do with reference to providing a light for the watchman's shanty at the head of the lane which leads to your property?

A. I had heard of the nails thrown in the lane Monday evening, and early Tuesday morning, December 30, I ordered a powerful light installed at the intersection of the lane and Route 24, to be so arranged that it would illuminate the intersection and the general vicinity, but not to blind passing motorists.

Q. Did you put a shanty there?

A. I also asked our people to move a cabin to a point on our property just east of the head of the lane near Route 24 where a special agent was to be stationed.

Q. Did you see anyone in the lane, or at the head of the lane, after this strike started who had a club or clubs in their hands?



A. Yes.

Q. When did you first observe anyone with clubs?

A. On Tuesday evening about 4 P. M. I went over to the yard. I was blocked from entering the lane by a T. P. & W. truck which was standing up the lane, and which was 1038 fixing up around the cabin which had just been placed on the east side of the lane. While standing there, I observed about fifteen pickets standing in the hard road. One of them, John Feuger, was carrying a large table leg. It was about three feet long, around at the small end, which he had in his hand, and square, with sharp edges, at the larger, or other, end. I asked him why he was carrying such a thing as that, that there was no need for anything like that.

Q. What did he say?

A. As I remember, he said they needed some reinforcements.

Q. So they used table legs, is that it?

A. There was just one of them.

Mr. Knoblock: I object.

The Court: Sustained.

Q. What kind of a fire was there at that point?

A. At that time there was a fire of wooden tree branches and other pieces of refuse wood.

Q. Did you later furnish any coal to these strikers?

A. Yes. Mr. Feuger said it was cold, and asked for some coal to keep warm. I told him I would see what I could do. As soon as I got down to the master mechanic's office, I asked Mr. Green, our master mechanic, to send the pickets a truck load of coal, which he did immediately.

Q. And after you delivered the coal, what happened that evening to one of your employees at the place where you delivered the coal?

Mr. Knoblock: I object, unless he knows of his own knowledge.

Mr. Heyl: I think he does.

A. Yes, I do. Following that, Mr. Merrill was assaulted.

1039 Q. Was that following the delivery of the coal to keep the pickets warm?

A. Yes, within less than an hour.

Q. Was there anything placed in the roadway leading from the hard road to your yards?

A. Yes. After they got the coal, they put sort of a

salamander in part of the traveled road in which they put the coal to keep warm, which blocked the road.

Q. Later did you furnish the pickets some more coal?

A. I told one of them (I think it was either Friday or Saturday) that whenever they ran out of coal, we would be glad to give them some more.

Q. That was before the restraining order was entered?

A. Yes, sir.

Q. Now, were you present near the time Zeno Merrill was assaulted on December 30, 1941?

A. Yes, I was. I was in the master mechanic's office.

Q. And what did you do?

A. Word came that someone was being assaulted at the end of the lane. I started up the lane, but was met about a third of the way up by Mr. Kipling, who told us Mr. Merrill had been hurt.

Mr. Knoblock: I object to this.

The Court: Yes, objection sustained.

Q. Did you see Merrill?

A. Yes; they brought Merrill into the master mechanic's office.

Q. Did you do anything with reference to calling police?

A. Yes, I called the East Peoria police to come over.

Q. And did they come?

A. Yes. In about ten or fifteen minutes a police-1040 man came over, and he got the names, and then I arranged with an attorney to go to the East Peoria police station, and to cause the arrest of the parties named by Merrill and Thompson.

Q. Now, on Wednesday morning, December 31, what, if anything, did you do with reference to requesting the officials of Tazewell County to protect your men and your property?

A. Early Wednesday morning, December 31, I telephoned Sheriff Donahue, asking if he would have deputy sheriffs at the entrance to the lane on twenty-four hour duty to prevent further trouble. Sheriff Donahue said he would come over to investigate the situation, and would try to have someone at the entrance on twenty-four hour duty. As to preventing trouble, he said he did not know how much could be expected. He said that the men arrested last night for assaulting Merrill—

Mr. Knoblock: I object. I think Donahue's testimony is the best testimony on that.

The Court: I think not. I think it is part of the case to show what has been done on the part of this company to prevent violence. I think that is part of the law.

You may testify.

A. Sheriff Donahue told me that the men arrested last night for assaulting Merrill were let out almost immediately, that George Donaldson, County Judge of Tazewell County, and City Attorney of East Peoria, was representing the Brotherhoods and their members, and that with this kind of a set-up nothing could be accomplished by arresting people, as they would be let out through Judge Donaldson's influence as fast as they were brought in for arrest.

1041 Q. Is that Judge Donaldson the same Judge Donaldson who appears in this court in defense of this case?

A. Yes.

Q. What else did the sheriff tell you?

A. In accordance with this promise, Sheriff Donahue came over to our yard at about 11 o'clock in the morning, and left a deputy at the head of the lane, and said that someone would be on duty there during the entire twenty-four hour period from that time on.

Mr. Knoblock: What day?

Q. What day was that?

A. That was December 31.

Q. All right! What else did he say?

The Court: Whom do you say left a deputy there?

A. Sheriff Donahue.

Mr. Heyl: Donahue?

A. Sheriff Donahue.

Q. Go ahead!

A. Mr. Elliott and I—

Q. That is Mr. John M. Elliott?

A. Our general counsel—had a conference with Sheriff Donahue and Deputy Goar, at which time Sheriff Donahue repeated his statements about the ineffectiveness of arresting anyone, about Judge Donaldson's representing the Brotherhoods and their members, and about the set-up being bad from our standpoint so far as the local authorities were concerned. He said he only had four men to look after the entire county, and that, while he himself was willing to do what he could, we would have to realize what

he was up against, and that the aid he could render  
1042 was necessarily limited. He asked us why we did

not ask for an injunction, and I replied we were going to try to run the railroad with the protection of the local officials.

Q. Now, did the deputy that was placed there while the sheriff was in your office remain constantly through the strike?

A. Well, I saw him from time to time. I don't know whether he was there at all times.

Q. And did the sheriff furnish protection to your men and the property in Tazewell County?

A. No, sir.

Q. Was there ever any protection furnished by the sheriff's office on any of the times when the trains were stoned or interfered with while they were in Tazewell County?

A. No, sir.

Q. Now, did you have any talk with the mayor or the chief of police of the City of East Peoria, Illinois?

A. I think it was on January 2. I sent a wire to the mayor of East Peoria, along with wires sent to officials all along our railroad, and shortly after sending a wire Mayor Brauns called me up on the telephone. Mayor Brauns of East Peoria called me up on the telephone, and said, "George, I'm sorry I can't do a thing for you."

Q. Did the City of East Peoria, either through the mayor's office or the chief of police, furnish any protection to your men or the property at any time after you made the request?

A. None that I was able to ascertain.

Q. Now, were you present at the time an engine was stoned at the Swords' Siding in the afternoon of December 31, 1941?

A. No, I wasn't there when it started. I heard 1043 about it shortly after it started.

Q. Did you go over there?

A. Yes. The first thing I did was to call the police.

Q. What police?

A. City of East Peoria.

Q. That is, after you received notice they were interfering with your train?

A. Yes.

Q. Did the police arrive there at any time before the train left the scene?

A. Well, we left there about forty-five minutes, as I

recall it, after the time I called the police. By that time they had not yet arrived.

Q. How far is it from the place where this train was stoned to the City Hall in the City of East Peoria?

A. About a mile and a half.

Q. And it is paved road, isn't it?

A. Yes, sir.

Q. How long would it take an automobile to travel from the City Hall to the place where this train was stoned?

Mr. Knoblock: I object. It would all depend on how fast it was going.

A. I should think a police car could get there in five minutes.

Q. And forty-five minutes after you phoned for assistance, and advised the City Hall the train was being stoned and the men being injured, did any policemen appear on the scene?

A. Not within that time, no, sir.

Q. Where was this train at the time you gave the word to the City Hall that it was being stoned?

1044 A. The engine was standing right on the derail at the—just east of the West Washington Street crossing.

Q. And did you go to the scene of this train?

A. Yes. I walked across the bridge to the scene.

Q. That is, the river bridge?

A. Yes, I walked over there on our bridge, the railroad bridge.

Q. When you arrived there, did you see any of the strikers, defendants in this case?

A. No, I didn't see any strikers at that time.

Q. Did you see any one of your employees there?

A. Yes. When I arrived, Messrs. Heilman, Thielbert, the engineer, DuBois and Thompson were there, along with some others whom I do not believe were employees.

Q. What did you observe with reference to the engine?

A. The engine showed the effects of the bombardment, with broken windows, broken headlight glass and marks on the side of the engine cab.

Q. What did you observe with reference to the members of the crew?

A. They seemed to be pretty well shaken up.

Q. Now, what if anything, did you do after you got the crew back on the engine?

A. Well, I had found out in the meantime that there were interstate cars in that cut, and the first thing that I did after finding that out was to find out from the engineer whether he felt like continuing, and he said he did, and I said, "We have interstate cars to deliver for Hiram Walker", and I said, "Let's go ahead and deliver them."

Q. What did you do?

A. I got on the front footboard on the right hand 1045 side of the engine, and we moved ahead.

Q. Across the Illinois River?

A. Yes, sir.

Q. As you passed the road that is intersected by this railroad at the east end of the bridge, what, if anything, did you observe?

A. Well, I was looking over at the highway, U. S. 24, as we started, and I observed a green automobile which was going slowly along, apparently following us. In the front seat there was a man driving who had a very angry look on his face, and he made a scab sign at us, and in the back seat, leaning against the partly opened window, with a baseball bat or some other kind of a bat in her hand, was a lady whom I did not then know.

Q. Has she been identified to you since?

A. Yes.

Q. Who was she?

A. Mrs. Newdigate.

Q. Mrs. Delman Newdigate?

A. That's what she said her name was.

Q. Who was called to the witness stand in this case?

A. Yes.

Q. What did you see her do?

A. She appeared to be saying something I could not hear, and she kept poking the bat out of the window in our direction.

Q. Did you know the other people in the car? The driver?

A. No, I didn't know the name of the man who was driving. I heard about his name since, but I didn't know his name at the time.

Q. Were you able to get the number of the automobile?

A. Yes.

1046 Q. Do you have it with you?

A. I don't have it here, but my recollection is it was 623-609.



Q. Did you learn whose automobile that was?

A. J. L. Mack.

Q. Is he one of the defendant strikers?

A. He's one of our ex-employees, yes, sir, as far as I know.

Q. Now, did you return to the yard, your yards, later that evening?

A. Yes.

Q. What did you observe on your way in?

A. I went over about 5 o'clock just as it was getting dark, and as I started to go into the lane there was a solid line of pickets standing perfectly still right across the entrance to the lane, and I was obliged to come to a stop to avoid hitting anyone.

Q. Later that evening did you go out?

A. Yes, I went out about an hour later.

Q. What did you observe then?

A. There was a large number of pickets there, about twenty men, at the entrance to the lane. As I went up the lane, I drove slowly, and as I did so I observed two pickets on my left hand side with specially-shaped paddles in their hands, and three or four other pickets with clubs in their hands.

Q. What did they do, if anything?

A. Well, as I approached, the pickets nearest my car opened a way for me to get through, but, as I moved on out slowly, one man got in front of my car and tried to stop me. I kept on moving slowly. He jumped out of the way, and then I heard some shouts, and someone threw open the door of my car, but I kept on going and the door slammed shut and I went on.

1047 Q. Do you know any of the men that were there that evening?

A. No, I didn't recognize any of them.

Q. That was at the regular picket line that had been established?

A. At the head of the lane, yes, sir.

Q. What happened on January 1, 1942?

A. Early Thursday morning on January 1, I telephoned Kipling. He said he was losing his special agents, that they were local men and couldn't stand the stoning and abuse that they were getting from our former employees, particularly since we had given such strict orders not to use their firearms. He said he needed help, and did not

see how he could do any more with the local people restricted as they were.

Q. Mr. McNear, did you or not give any directions to the chief special agent of your road, Mr. Harold E. Kipling, with reference to the use of firearms by your special agents?

A. I told him right from the start, and repeated it several times, that we didn't want to use any firearms.

Q. Now, after you had this report from your chief special agent, Mr. Kipling, with reference to his inability to hold his special agents, what, if anything, did you do to obtain protection for the men and the property?

A. I telephoned Pinkerton's at Chicago to see if they had any men who were used to this kind of thing that they could send down. They said they no longer supplied guards in strike situations, and referred me to another concern.

Q. What was that concern?

A. That concern gave me the name of a Mr. Goldby of the Illinois State Detective Agency.

Q. Did you have a telephone conversation with him?

1048 A. Yes, I had, I think, two telephone conversations with him, and I finally arranged that Mr. Goldby would come down during the day with two or three of his men, and size up the situation.

Q. Did he come and, if so, when?

A. Yes. He arrived in Peoria about 7 o'clock, as I remember, that evening.

Q. On what evening was that now?

A. January 1.

Q. That would be Friday, wouldn't it?

A. No, Thursday.

Q. Thursday, that's right.

A. I talked to Mr. Goldby, and he said he would check into the matters with the local authorities the following day, and see what arrangements could be made for protection, and that he would have his men develop what information they could.

Q. Did you have any further reports after that from Mr. Goldby with reference to the situation?

A. Mr. Goldby reported on Friday afternoon that the authorities were willing to cooperate, and that they had made a canvass of available local men. However, they

could not find enough local people whom they could recommend, and who could stand the gaff with the situation getting as bad as it was, and they suggested getting men from Chicago who were experienced and who would be deputized. I authorized Mr. Goldby to send for these men. He did so, but by the time they got here on Sunday the restraining order had been signed, and these men were not used.

Q. Did you have any further report from Mr. Goldby after that?

A. Mr. Goldby reported to me on Sunday, January 4, that he found out that Mr. Coyle had a man named 1049 Red who was handling the violence end of the strike.

Q. What further did you do with Mr. Goldby?

A. Since order was restored immediately the restraining order was signed, we had no further need for Mr. Goldby's services, and he returned to Chicago, Monday, January 5.

Q. Now, I want to go back to January 2, 1942. What did you have to do with the operation of the train west on that day, which I think has been referred to in this case as extra 41?

A. Well, early Friday morning I was aware that the violence and attacks on our trains was becoming more serious, were becoming more serious, that more threats were being made, that more of our people were becoming intimidated, including employees in classes and crafts not involved in the strike, and that our protection was disappearing because of the failure of local authorities and the unwillingness of several of our special agents to continue in our employ with the restrictions as to the use of firearms which we had imposed upon them. Then limited protection which we had heretofore used of one special agent in the engine and another in the caboose had proved inadequate, and Mr. Best reported to me that some of the train crews had expressed the desire for more protection. I therefore arranged with Mr. Best to run a train west Friday morning, and to concentrate our special agents on that train. I called up Kipling Friday morning before the train left, and again told him to tell his men not to use their guns. I knew that the people running the strike were being kept informed as to our train movements, and that they were getting other information as to what was being done, and felt that if they knew—

Mr. Knoblock: I object to what he felt.

1050 The Court: Yes, objection sustained.

A. Well, my decision as a result of all that was that we thought—

Mr. Knoblock: I object to what "we thought".

The Court: I think he can state what he did.

A. —if we would put or concentrate our special agents on one train, they might leave us alone.

Q. Now, after this train left, or about the time the train left the yards, did you receive a telephone call from the special agent, Kipling?

A. Yes. At about 8:30 in the morning I received a telephone call from Kipling, who was then in Bartonville. He said three automobile loads—

Mr. Knoblock: I object to what he said.

The Court: Yes, objection sustained.

Q. Did he report to you the condition he had found along the road?

A. That there were three automobile loads of ex-employee who were following the train, and they had told Kipling they would get our train crew before they got to Hollis.

Mr. Knoblock: Oh, I object to that.

The Court: Yes, objection sustained.

Q. After you got that report from Kipling, what did you do?

A. I immediately put in a call for the sheriff's office.

Q. To whom did you talk?

A. I talked to Mr. Vespa.

Q. What did you tell him?

A. I told him what Kipling told me, and he said he would do his best to protect our train.

Q. What did he say?

A. That he would send a car.

1051 Q. Did you telephone any other authorities?

A. I also telephoned the state police.

Q. Whom did you talk to there?

A. I talked to Mr. Lohr.

Q. What did you tell him?

A. I told him the same thing I told Vespa.

Q. What did he say?

A. He said he didn't know whether they could do anything, and would call back in five minutes if they could.

Q. Did you ever hear anything from him?

A. No, sir.

Q. Did he ever call you again?

A. No, sir.

Q. Did the Peoria sheriff's office do anything about it, if you know?

Mr. Knoblock: If he knows of his own personal knowledge.

Mr. Heyl: We will show that by someone else.

Q. Later that morning did you hear someone had been shot?

A. Yes, I heard Harold Dilley had been shot, and that he was at Proctor Hospital.

Q. What did you do with regard to that?

A. I asked Hanna Clinic, our company surgeons, to see Dilley and do whatever they could for him, and report back.

Q. Did you have a report from any of the surgeons in that Clinic, without stating what the report was?

A. Yes, from Dr. Burroughs.

Q. Now, Mr. McNear, what other steps did you take to get protection for your men and your property along 1052 the line of the Toledo, Peoria & Western Railroad from Keokuk, Iowa, to Effner, Indiana?

A. Early in the morning of January 2 I sent a wire to the sheriff of every county through which we operate.

Mr. Knoblock: Just a moment. I wish to object to this because, as I recall the evidence in this case, there are no identifications made of any of these defendants excepting in three counties (that is Peoria, Tazewell and Fulton), and what was done with reference to the sheriff's of other counties I insist is immaterial.

The Court: It perhaps would be. I am not going to pass on that, but the same telegrams were sent to these three.

Mr. Heyl: If the court please, the record shows the property of this company was injured at Watseka, Iroquois County. That is a circumstance—

The Court: The objection will be overruled.

Mr. Heyl: Will you read the question to the witness, please?

The Court: As I understand the law, it's necessary for the plaintiff company in this particular case to show that they have exhausted all methods and means by which they could prevent the bringing of an injunction. That is my understanding.

Mr. Heyl: That is correct.



The Court: That being true, I think the plaintiff, of course, must show everything he did do to try to prevent the bringing of this particular suit and asking for 1053 a restraining order. The order itself, as I understand it,—or petition—stated every method had been exhausted for that purpose.

Mr. Heyl: That's right.

The Court: They must show that as a matter of fact. If, by the showing, he asked every sheriff in the particular district to aid him (what that might be I don't know), it would seem that would be part of the plaintiff's case.

Is that your understanding of the law, Mr. Knoblock?

Mr. Knoblock: That is my understanding of the law once a federal district court has jurisdiction, but it is our settled position that the Norris-LaGuardia Act does not automatically give jurisdiction in a labor dispute to a federal court.

The Court: I don't so understand, either, but they must prove these other things.

Mr. Knoblock: Furthermore, there is no tying up to these defendants in any way except in the three counties, and I refer to Fulton County and in only one place, and that is Canton, and all these other places these defendants that have been named or connected with these acts of violence have been in two other counties.

The Court: I don't want to pass upon that, but there has been some proof made the railroad was injured, whether by these defendants or others, it would still be necessary for them to make an effort to prevent that sort of thing.

Mr. Heyl: I want to make a further suggestion, 1054 and that is that the equity rules of the United States courts provides an injunction against one man or two men or ten men binds every man who has notice of that injunction later on, and, for that reason, it will be necessary for us to show what was done all along the line so, if a preliminary injunction is granted and posted along the property, it would bind anyone who knew of the injunction.

The Court: The question is perfectly proper, and he may state what he did.

(Question and answer read by reporter.)

A. Do you want me to enumerate those counties?

Q. Yes, you might enumerate them so the record will show.



A. Iroquois County, Ford County, Livingston County, McLean, Woodford, Tazewell, Peoria, Fulton, McDonough, Hancock, Henderson. Do you want me to read the wire?

Q. Just tell the substance of it.

A. I said in the wire that our operations were being seriously interfered with and delayed by acts of violence against train crews, damage and destruction of railroad property and equipment, acts with intent to derail trains, and other acts tending to intimidate our employees to prevent them from conducting our proper and regular operations in interstate commerce, and "request that you furnish all necessary protection to prevent such violence, damage, destruction, sabotage and intimidation and other acts tending to interfere with the operation of the railroad. Please wire collect immediately if you will furnish such protection within your jurisdiction, also if you will supply men to convoy our trains through your county. 1055 If you advise you are willing to furnish such protection we will inform you the hour our train is expected to arrive at your line. Rush answer."

Q. Mr. McNear, what replies from these various officers and counties did you receive, without reading all of them?

A. I got no reply at all from Ford County, Tazewell, Peoria, Fulton, Hancock or Henderson. The following counties, Iroquois, Livingston, McLean and McDonough, advised they had no funds with which to give such protection. Woodford County was the only county that indicated that they would endeavor to give us protection.

Q. Now, at the same time, or at any time during this strike, and before this complaint was filed for a restraining order, did you or not communicate with the mayors or city officials of any villages or cities through which your railroad operates?

A. Yes. At that same time, early in the morning of January 2, I sent a similar wire to the mayors of Sheldon, Watseka, Crescent City, Gilman, Piper City, Chatsworth, Forrest, Fairbury, Chenoa, Gridley, El Paso, Eureka, Washington, East Peoria, Peoria, Bartonville, Glasford, Canton, Cuba, Smithfield, Bushnell, Good Hope, Sciota, Blandinsville, LaHarpe, Ferris, Elvaston, Hamilton, Warsaw and Keokuk.

Q. What replies, if any, did you receive from these officials?

A. I received no reply from Crescent City, Piper City, Peoria, Bartonville, Glasford, Canton, Cuba, Smithfield,

Good Hope, Blandinsville, Warsaw or Keokuk. As to the other towns, the following towns said they were unable to give the protection requested: Sheldon, Watseka, Gilman, Chatsworth, Forrest, Fairbury, Chenoa, Gridley, El Paso, Eureka, Washington, Bushnell, Sciota, La-1056 Harpe, Ferris, Elvaston and Hamilton. The City of

El Paso sent a wire indicating that they would endeavor to give protection, but that they could not convoy our trains through town.

Q. Did you later, after receiving that wire, have a conversation with either the chief of police or mayor with reference to that?

A. No, I did not.

Q. In El Paso?

A. No, I did not.

Q. Did someone else?

A. Yes, sir. I would explain some of these towns would like to help if they could, but they were short, they didn't have the men to do it.

Q. Did you or not receive any assistance in any of these villages or cities or towns where the testimony in this case indicates that violence was done to your trains?

A. Not where there was any violence, no, sir.

Q. Did you have any conversation with the sheriff of Peoria County, or his deputy, with reference to furnishing aid, in addition to what you have already stated?

Mr. Knoblock: Just a minute! I object. The sheriff of Peoria County testified, and his testimony is the best evidence.

The Court: He has testified. I think this man has a right to testify to the conversation.

A. I would say the same thing he did.

Q. Say it!

A. I called them up one of the early days of the 1057 strike, and he said there wasn't much they could do, that they would do what they could, but that he had a lot of territory to cover. When I sent him the wire on January 2, he made no response to that.

Q. Was any assistance furnished, so far as you know?

A. No, sir.

Q. Mr. McNear, can you tell the court with reference to the embargo on freight, why it was put on and when?

A. Late in the afternoon of December 6 we received word from the National Mediation Board that they had been advised by these Brotherhoods that there would be

a strike on our railroad effective 11 A. M., Tuesday morning, December 9. At that time we were handling a very fairly large volume of traffic. A considerable proportion of that traffic was what we call "perishable traffic". It goes on guaranteed schedules, substantial claims have to be paid in the event there is any delay, and also that is for loss of market, and, of course, also we would be liable if, by reason of such delay, there was any deterioration in the commodities that we were handling. We were also handling a considerable amount of other traffic that was moving on what we might call "expedited schedules". We realized that this strike was coming on us on very short notice, and we felt that the best way to protect the shippers' interests was to clear our railroad immediately of all traffic so that, when this strike hour arrived at 11 o'clock Tuesday morning, there would be no cars on the railroad that would be delayed because we had no other organization, no plans made, nothing done to handle traffic after that hour.

Q. Is that the reason you put the embargo on?

1058 A. Yes, sir.

Q. And then did that embargo remain on from that time on, or was there a change in the situation, without stating the details?

A. On the morning of December 8, as I recall, about noon, we received word from the National Mediation Board that they had requested these Brotherhoods to postpone the strike.

Mr. Knoblock: I object to the words "these Brotherhoods". I think he should designate which they were.

Q. Which ones?

A. The Brotherhood of Railroad Trainmen. I don't believe that wire said "the Brotherhoods". I believe that it said "employees", that they requested the employees not to go out on strike. I think that is the way it was, that they requested the employees not to go out on strike,—

Q. All right!

A. —and when we received that wire, we amended the embargo so as to handle traffic loaded on our line and coming to points on our line, except perishables and livestock.

Q. All right! And then when was the embargo—Was the embargo put on again, or does that remain to the present date?

A. No, that embargo has remained substantially as it was first put on since that time.

Q. Since it was amended?

A. Yes. We thought for a moment there, if there was going to be a real—

Mr. Knoblock: I object to that.

The Court: Yes, objection sustained.

Mr. Heyl: All right!

1059 Q. Now, before this strike, Mr. McNear, how many trains did your railroad operate regularly a day?

A. Well, I don't keep track of the trains, sir. I don't know. I think there were—I can tell by referring to some papers I have here.

Mr. Heyl: I will ask someone else. I won't bother you with it.

Q. Is there any reason why the embargo has not been released or removed?

A. The embargo would have been lifted some little time ago had it not been for all this violence and interference with our operations.

Q. Is that the reason the embargo has been kept up?

A. Up to this time, yes. We hope, if this present situation continues, to lift it within a few days.

Q. Has there been any violence since the restraining order was issued Saturday, January 3, 1942, that you know of?

A. None, with the exception of the little incident over at the P. & P. U. junction.

Q. And are you operating your trains now?

A. Yes, sir.

Mr. Heyl: I think you may cross-examine.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. McNear, I understood you to say that prior to December 29, 1941, your road had hired no extra guards other than the three regular ones that you had on duty.

A. It's my information about it.

1060 Q. You would know, wouldn't you? You were the one that would give authority to hire?

A. Oh, yes. If any additional special agent was to be hired, usually they would get an authorization from me, yes, sir.

Q. And then you say you got in touch with Mr. Kipling

about the 28th, and told him to start hiring some extra guards?

A. Well, I think I told him that he had better put on a few more men.

Q. Well, on the 28th there hadn't been any violence then, and there?

A. There had been some threats, as I testified, that if the strike went into effect, that nobody would be alive when a train got to the Illinois River bridge, there would be no train that would ever get to the Illinois River bridge.

Q. Mr. McNear, I asked you this: There had been no violence on the 28th?

A. No. There had been threats of violence.

Q. I asked you if there had been any violence?

A. Oh, no.

Q. Isn't it a fact that on December 12, 1941, you were in Washington, D. C.?

A. Yes, I think that was the day.

Q. And isn't it further a fact that you there met with representatives of labor with reference to mediating your problems?

A. No, the Mediation Board officials distinctly told us that they were not mediating the dispute at that time.

Q. Well, isn't it a fact you were there in connection with your problems, however?

A. We were there at the invitation of the Mediation Board.

Q. I see. And isn't it further a fact that on that 1961 date of December 12, 1941, that you sent a telegram to your chief special agent, Kipling, as early as December 12, instructing him already at that time to hire extra guards?

A. I don't recall that.

Q. You wouldn't deny that you sent that telegram, would you?

Mr. Heyl: Let's see the telegram if there is such a telegram.

Mr. Knoblock: Kipling should have it.

The Court: Yes.

A. I don't believe I have ever sent a wire to Mr. Kipling in my life, don't think I have ever sent a wire to him.

Q. You say you had a light put up on December 30, 1941, near the head of the lawe, is that correct?

A. Yes, sir.

Q. Now, you don't know how that light was working there actually of your own knowledge? You only know what instructions you gave, is that right?

A. Well, I saw it lit.

Q. When? What day?

A. On Tuesday afternoon, and when we heard the report of this assault, we could look up there and see these men.

Q. You saw it lit there on this Tuesday evening, is that right?

A. Yes, sir.

Q. And how was it shining at that time?

A. Well, a good bit of the light was shining down the lane. As I tried to explain, it was a powerful light, and we didn't want it to shine out into the highway to the extent it would blind passing motorists.

Q. Later on the focus of that light was shifted, was it not?

1062 A. I don't know about that, sir.

Q. You didn't watch that closely?

A. Oh, no.

Q. On Tuesday, 4 P. M.,—I assume that is the 30th, is that right?

A. Yes.

Q. —you saw John Feuger with a table leg, and you asked him why he carried that table leg, that there was no need for that, is that correct?

A. That's right.

Q. Well, John Feuger joked there and laughed with you and conversed with you on that occasion, didn't he?

A. We had a fairly long conversation.

Q. And a jolly conversation? There was no bitterness in it, was there?

A. I think a part of the time (if you know John Feuger, he's a great fellow, he's an Irishman) he was a little exercised part of the time, and part of the time he was jovial.

Q. He never threatened you with that club in any way?

A. He didn't threaten me, no, sir.

Q. A part of the time he was exercised about—Was it because it was pretty cold, and he wanted some coal?

A. Yes, he was cold.

Q. And he said, "George, why don't you send us some coal?"

A. That's right.



Q. And you said, "Maybe I will do that"?

A. That's right.

Q. He wasn't mad enough at you to refrain from asking for coal from you, was he?

1063 A. Oh, no.

Q. Now, then, you say sometime later that evening a man by the name of Merrill was involved in a dispute at the head of that lane. You didn't see anything about what happened down there?

A. I didn't understand there was any dispute.

Q. We will say he was involved in an occurrence down there.

A. Yes, he was assaulted.

Q. You don't know that? You didn't see that?

A. I saw him after it happened. He was pretty badly hurt.

Q. You don't know just how that happened, though, do you?

A. Well, I know Mr. Merrill.

Q. You don't know how it happened? I imagine you do know Mr. Merrill, but you don't know how that happened, do you?

A. No, not the actual thing.

Q. You weren't there?

A. No.

Q. You never got any further than a third of the way down the lane,—

A. That's right.

Q. —and then you went back? Now, then, you called the East Peoria police about this occurrence, is that correct?

A. Yes, sir.

Q. And through your efforts there were several men arrested, is that true?

A. Well, I wouldn't say it was through my efforts. I would say it was through their efforts.

Q. Well, I mean the request for the arrest came through your efforts?

A. Oh, yes, naturally.

Q. And the East Peoria police performed that task, didn't they?

1064 A. Well, I don't know as to that. I understand they arrested them. I wasn't there. I didn't see that part of it.

Q. Was your attorney there?

A. I think there was an attorney there.

Q. You said you had arranged with an attorney. You said you arranged with your attorney.

A. Yes, I think he was there.

Q. Who was that?

A. I don't know his name. I really don't know his name, whether he came from Mr. Elliott's office or Mr. Heyl's office; one of the young attorneys from one of those offices.

Q. And it was through one of those offices legal services were rendered on that occasion?

A. Yes, whatever was done.

Q. And these men that were reported as a result of that trouble with Merrill were caused to be arrested, and then they gave bond for their release, didn't they?

A. I don't know about that, sir.

Q. And if they did give bond, that is a perfectly legal and proper method to secure a release?

Mr. Heyl: I object. I don't think the witness should pass on that.

Mr. Knoblock: We will withdraw the question.

The Court: All right!

Q. And then on the 31st of December, 1941, which was on Wednesday, you telephoned to Mr. Donahue and conversed with him?

A. Yes, sir.

Q. And you requested a deputy at the head of the lane on twenty-four hour duty?

1065 A. Yes, sir.

Q. And he agreed to do it?

A. He said at that time he would try to.

Q. And, as far as you know, a deputy was placed on duty there?

A. Yes, sir, he was placed there later that morning.

Q. Not only the deputy was there, but you had one of your special guards out there all the time?

A. We had a man there, yes, sir.

Q. He was one of your special agents, wasn't he?

A. Yes.

Q. Did any one of your special agents ever report to you they couldn't handle the situation there at the end of the lane?

A. Of course, these agents don't report to me, you understand. I don't hear everything that goes on.

Q. Was it ever brought to your attention by anyone?

A. My recollection as to that is that the special agent, one man up there, under orders not to use any firearms or do anything, might as well not have been there.

Q. That is just your opinion, is that right?

Mr. Heyl: You asked him for a report, and he gave it to you.

Q. But, as far as you know, did any one of your special agents even go out and ask them to refrain from doing anything they did?

A. I don't know, sir.

Q. Now, the telegram— Let me see those telegrams, if you will, that you sent to these various county sheriffs and city officials.

A. (Witness complies.)

Q. Where are some of the replies?

1066 A. There they are (indicating).

Q. Do you mind if I take them down to the table?

A. Oh, no, no. Take them away.

The Court: I think we will be at recess for about ten minutes.

(Recess.)

The Court: You may proceed with the cross-examination.

Q. Mr. McNear, with reference to these telegrams that you sent to various of these city officials and county sheriffs, I will ask you if it isn't a fact that the sheriff at Pontiac, Illinois, replied to you on January 5, 1942, in which he said that they had no funds for special deputies, and the matter would be taken up with the County Board, and that you should have a representative of your company call at his office.

Mr. Heyl: I want to object to that because January 5 was the day after the restraining order.

Mr. Knoblock: That is just what I'm getting to.

Mr. Heyl: Just a minute, until I make my objection!

It was a day after the restraining order was issued, and it is immaterial what he said at that time.

The Court: I think he may answer. He may see the telegram, unless he doesn't desire to see it.

A. I would rather take a look at it. (Witness examines same.) Well, he says they have no funds.

Q. And they would take it up with the County Board, and to have a representative of your company present, isn't that true?

A. Yes.

1067 Mr. Heyl: I want to object to that because, if the court please, the County Board doesn't meet until in February under the statute of that county, so it is immaterial what he said in that telegram.

The Court: He answered.

A. I took it these telegrams were polite—

Mr. Knoblock: There is no question pending.

Q. This statement to you from the sheriff of Pontiac, Illinois, he would have to take it up with the County Board, did not come until two days after you had applied to this court for a restraining order, isn't that true?

Mr. Heyl: I object; immaterial when it arrived.

Mr. Knoblock: He made representations to this court—

The Court: He may answer.

A. It arrived January 5, 12:45 P. M.

Q. That was two days after you applied here for this restraining order?

A. The answer came on—

The Court: The objection is sustained to that.

A. The answer came. It isn't when I sent the wire.

Q. Now, in reference to the reply that you received from the sheriff of Livingston County, the Sheriff of Livingston County wrote you a letter on January 3, which I assume you did not receive until the 5th, stating that he had sent a copy of your letter to the chairman of their County Board, and would await his instructions, isn't that true?

A. Is that the same county?

Q. It's Livingston County.

A. Well, he sent me at the same time a copy of  
1068 a letter in which he said that he had talked with me on the telephone, and informed me he had no funds to handle such a proposition, but that if I would pay the bill he would put on some special deputies. That's what this letter says.

Q. I refer to this letter here (pointing). I am referring directly to that letter there.

A. He says to me in his letter of January 3— He says, "I am enclosing a copy of a letter I sent to Mr. Koopman."

Q. Now, I am not interested in the copy of the letter. I am interested in the original letter he sent you.

The Court: What is the question?

(Question read by reporter.)

The Court: That's in the letter, isn't it?

A. Yes, he said he was awaiting his instructions.

Q. And he did not refuse to cooperate or to give you whatever protection was available, did he?

A. That isn't what the—

Mr. Heyl: I object.

The Court: Objection sustained.

Mr. Heyl: Asking for a conclusion.

I therefore ask to have his answer stricken.

The Court: It may be stricken.

Q. The sheriff in no way refused to cooperate in that way?

Mr. Heyl: I object. The letter is the best evidence.

The Court: Sustained. The letter is the best evidence.

Mr. Knoblock: Are you putting it in evidence?

Mr. Heyl: I am objecting to your question.

1069 I am not on the stand.

Q. The statement I read from the letter is true and correct, isn't that right?

A. It isn't the whole letter. It doesn't tell the whole story. The whole story is on the carbon copy which is attached to that letter and is a part of that letter.

Q. The telegram you received from Joseph Schneider, sheriff of Woodford County, advised that protection would be given, and to advise when the men were needed and where?

A. May I see that, please? (Witness examines same.) Yes, Woodford County is the one county that told us they would give us the protection that we wanted, yes, sir.

Q. Then on January 2, 1942, the sheriff, Clarence P. or G. Paulsgrove, sheriff of McDonough County, sent you a telegram that he was willing to furnish protection as outlined in your telegram of January 2, 1942, upon condition that you furnish the men that he could deputize them, but that he had no funds with which to pay them, is that right?

A. That wasn't giving us the protection we had asked for. He says if we pay the bill that he might do some things.

Q. He would deputize your men, is that right?

A. At our expense.

Q. At your expense? I mean if you wanted to pay these men.

A. I don't call that giving us protection.

Mr. Knoblock: I move that be stricken.

Mr. Heyl: You asked him that.



The Court: It may stand. Go ahead!

Q. Then on January 2 you received a letter from Sheriff Walter Nierstheimer of McLean County, in which 1070 he also agreed to furnish reliable special deputies at your expense, isn't that true?

Mr. Heyl: Ask him what's in the telegram,—

Mr. Knoblock: That's what's in there.

Mr. Heyl: —not your construction.

A. Mr. Nierstheimer says: "Do not have large enough force or funds to employ more but can furnish reliable special deputies at your expense." I didn't consider that giving us any protection.

Mr. Knoblock: I move the latter part be stricken.

The Court: Yes, it may be stricken.

That is what the telegram says?

A. Yes, sir.

The Court: Go ahead!

And on January 2, 1942, didn't the sheriff of Irroquois County from Watseka, Illinois, send you a wire, and said in substance: "Do not have funds"?

Mr. Heyl: I object to the substance.

Mr. Knoblock: I will read the wire (reading):

"Do not have funds to convoy trains. Will use all means to prevent crime and will make arrests if crime is committed."

A. That's what the wire says, yes, sir.

Q. Did you consider that sufficient protection?

A. Well, we had had an experience in Tazewell County it didn't do any good to arrest people.

Q. I see. You felt that the only protection that would be adequate was to at all times convoy your trains, is that right?

A. The thing we wanted protection on particularly was the moving train, and the only way that you can 1071 protect a moving train is to have somebody with some authority ride that train.

Q. Then it was your purpose, as I see it, to secure the guarantee from every sheriff of every county throughout which you operated to convoy your trains from one end of the road to the other?

Mr. Heyl: I object to the form of the question.

The Court: I think he may answer that.

Mr. Heyl: If he understands it.

The Court: Read it!

(Question read by reporter.)



A. We didn't ask for any guarantee. We merely asked that the authorities, that is, the public authorities, ride our trains and give us protection, because they were protecting a moving train. That was what we wanted protection on.

Q. With reference to the telegram that you received on January 3, 1942, from Mayor Otto Brauns, Mayor of the City of Peoria—East Peoria—I will ask you if that telegram isn't in effect: "In reply to your telegram of January 2, 1942, please be advised that we have adequate police force for protection of all property within our city limits. We realize at this time your company is having labor trouble and our police force will do everything possible to maintain law and order but we can not assign our police force to convoy trains through the city"? Was that received by you from Mayor Brauns?

A. I received such a wire, yes, sir.

Q. And the City of East Peoria was one of the places where you were receiving most of your trouble, isn't that right?

A. And practically no protection of any kind.

Q. You received this telegram from the mayor?

A. And the next day the chief of police said the 1072 mayor had no right sending such a wire.

Q. The chief of police, in your judgment, is over the mayor?

A. He evidently knew more about it than the mayor did.

Q. Then on January 2, 1942, did you receive a telegram from Mayor W. E. Froelich from the Village of Gridley: "Wire received. Gridley will cooperate and do all within our power to preserve law and order in our municipality?"

A. But he doesn't answer the question, sir.

Q. Wait a minute! Did you receive that telegram?

A. Yes, but he doesn't answer the question.

Mr. Knoblock: I move the latter part be stricken.

The Court: Yes. The question is, Did you receive that telegram?

A. Yes, sir.

Q. Did you receive a wire on January 2 from Mayor H. W. Bradshaw of Watseka, Illinois: "Will be glad to cooperate any way possible. Notify police on duty"?

A. Yes, sir.

Q. Did you receive a wire on January 2 from Mayor Albert Mulder from the City of Gilman, Illinois: "Will give all protection possible"?

A. Yes, sir.

Q. On January 2, 1942, did you receive this telegram from Dr. Bert Roan, mayor of Bushnell. "Your telegram requesting protection for trains running through Bushnell received. We will accord your road protection any other property owner receives in our city. No report of violence or destruction of property in our city has been reported to me now. However, if such a thing should happen the 1073 perpetrators will be dealt with according to law and will be arrested and confined to our jail the same as any other criminal. We will be pleased to act immediately on any report of violence or sabotage but see no reason to hire an army to convoy your trains through Bushnell until such time arrives that acts of sabotage are actually committed"?

A. Yes, sir.

Q. That telegram was received?

A. Yes, sir.

Q. Did you receive, on January 2, 1942, the following telegram from the mayor of Hamilton, Illinois, Fred Twes-ten: "Will give you all possible protection. Notify us when trains arrive and leave"?

A. Yes, sir.

Q. Did you, on January 3, 1942, receive the following telegram from Josepli Dietz, mayor of the City of Chats-worth, Illinois: "I am telegraphing you to let you know that I have received your telegram and tell you that we have given our night and day policemen instructions to be especially watchful concerning your property in the village and to question all persons of suspicious appearance concerning their business and to get them moving on out of town or telephone the sheriff's office if he deems aid from the sheriff is necessary. You should get in touch with the sheriff's office and ask them to cooperate. We have no funds or men available to assist your trainmen in convoying your trains through the village and I don't think we would have any right to expend money along that line"?

A. Yes, sir.

Q. Well, now, Mr. McNear, as I understand it, on De-cember 31, 1941, you went over to Swords' Siding in East Peoria, is that true?

1074 A. That afternoon, yes.

Q. About what time?

A. Oh, I think it was at about 3:30.

Q. And, as I understand it, when you arrived there you didn't see any of the strikers around?

A. No, sir.

Q. Then it may well have been, might it not, that the East Peoria police force had arrived and gone on when they found no disturbance around?

A. Nobody told me anything about the East Peoria police having been there, and I am sure they would have told me had the East Peoria police arrived.

Q. And that is the only basis upon which you base your judgment that the East Peoria police never arrived on that occasion?

A. No, it is not. The newspapers the following day said the East Peoria police did not arrive until after our engine had left the scene.

Q. You consider that, then, the other basis upon which you reached your opinion?

A. The fact that the train crew didn't tell me about it, and the fact that I read it in the newspapers the following day, and the fact that I didn't see them myself.

Q. I see. And the incident that occurred there occurred at approximately a quarter of 3 or 3 o'clock, did it not?

A. Well, if it did occur that early, then I was over there within fifteen minutes after the first report came in, as I remember.

Q. Now, did I understand you to say that when you got back over there you say Mr. Heilman?

A. Yes.

1075 Q. Were you present in court when Mr. Heilman testified?

A. Yes.

Q. I will ask you to recall as to whether or not he stated that he had gone on to the City of Peoria in the car of a Mr. Callender, and had gone to the T. P. & W. Union Station immediately following this occurrence.

Mr. Heyl: I object to what somebody else testified.

The Court: Yes, objection sustained.

Mr. Knoblock: I am just asking him to recall that testimony.

The Court: No, objection sustained. We can't rehearse the testimony. If it is contradictory, of course you have a right to take advantage of that.

Q. You say you saw a green car following the train after you started back toward Peoria, and there was a man in there with an angry look on his face, is that right?

A. Yes, sir.

Q. And somebody made a scab sign, is that right, and the lady had a baseball bat? Were you put in any fear of bodily harm by that lady with the baseball bat?

A. Well, not in that instance, but I didn't know what was going to happen when we got across the bridge.

Q. You were not fearful that this lady with the baseball bat would attempt any violence upon you, were you, or your train crew?

A. Oh, no. I thought she was giving me a little idea of what was going to happen. She wasn't directing it necessarily at me. I think it was at everybody that was on the crew there.

Q. I see. And how long did you see that lady that day?

1076 A. You mean as we went along?

Q. Yes.

A. Oh, I guess about a minute.

Q. Had you ever seen her before?

A. No.

Q. You were able to identify her as Mrs. Delmar Newdigate here in court the other day, is that right?

A. Yes, I saw her in court; yes.

Q. No one else on the train knew her but you, is that right?

Mr. Heyl: I object as asking the witness for a conclusion.

The Court: Sustained.

Q. Then on the same evening of the 31st at about 5 P. M. you went through the picket line twice on the lane leading from your roundhouse to Route number 24, didn't you?

A. Yes.

Q. And coming out, the pickets made a way and opened up and let you through?

A. I wouldn't say they did entirely, no.

Q. Did I misunderstand you on direct examination? I understood you to say they opened up and let a way out?

A. The pickets nearest me did, yes, but it is like running a gauntlet. As I got through, there was a shape at the end who stood right in front of the radiator.

Q. He didn't harm your car in any way, did he?

A. I don't believe he caused any damage to the car, no, sir.

Q. And on January 1, 1942, I understood you to say that your special agent, Kipling, telephoned you and said that he

was losing his special agents because, being local men, 1077 they couldn't stand the abuse and couldn't go ahead with their work because they couldn't use their guns, is that right?

A. Well, in the first place I telephoned Mr. Kipling, if that makes any difference.

Q. I think that's right.

A. But what you said is just about what I testified, that these men were sort of defenseless. Here you are, you have got people standing—

Mr. Knoblock: Just a minute.

Mr. Heyl: Let him answer, and you can strike it if it isn't proper.

The Court: Read the question.

(Two preceding questions and answers read by reporter.)

The Court: That part of the answer may be stricken as to whether the conversation related by counsel is correct.

Q. After telephoning Mr. Kipling on January 1, 1942, to that effect, as I understand it you again instructed Mr. Kipling the special agents or guards were not to use their guns?

A. That's right.

Q. But some of them did use their guns on the morning of January 2, 1942?

A. That's what I understand.

Q. Now, you mentioned a man by the name of Goldby?

A. Yes, sir.

Q. And he was here in Peoria, and then he came back on the 4th of January?

A. No. So far as I know, when he arrived here on the evening of the 1st, I think he was here right along, as 1078 far as I know. I didn't see him all the time. He may have gone out of town.

Q. Didn't he state to you that he couldn't get enough local men, and suggested going into Chicago, and that he did, and they came in—

A. I think he sent one of his men to Chicago for the help.

Q. I see. And he reported to you that Mr. Coyle had a man named Red working for him, is that right?

A. That's what he told me.

Q. And he placed no further designation on him except "a man named Red"?

A. That's right.

Q. Now, I will ask you if you or any of the authorities on your road at any time have ever asked aid of the sheriff of Peoria County or Tazewell County to ever make an arrest



as a result of any acts of violence that you have complained of, and they have failed to respond?

Mr. Heyl: I object. That is immaterial. That isn't the test.

The Court: He may answer.

Mr. Heyl: Not to do anything until after the act is done—

The Court: He may answer.

A. Well, I did, as I have said, ask to have the people complained of in the Merrill incident arrested.

Q. They were arrested, weren't they?

A. So far as I know, yes, sir.

Q. You never asked any time the arrest of any other men?

A. But when Sheriff—

Q. Wait a minute. You have never asked for the 1079 arrest of any other men, and the sheriff hasn't complied with the request?

A. I was informed it would be useless.

Mr. Knoblock: I submit that isn't an answer.

The Court: I think you should answer whether the sheriff refused.

A. No, I can't say that. As a matter of fact, I don't have to do with arresting people. I did happen to be there at that particular time that Tuesday evening, but I don't remember the special agents' department or these other departments that would handle that business—

Q. And you never have— You never have— You never asked the sheriffs of either Tazewell or Peoria County to dispatch a detail at a point of disturbance, and have them refuse your request, have you?

Mr. Heyl: I think that's too general, and I am going to object to it. It is not proper.

The Court: Read the question.

(Question read by reporter.)

The Court: I think he may answer that, whether they refused or not.

A. Well, in the first place I sent this wire to the sheriffs about conveying our trains through town, and we knew that wherever they went they were apt to be assaulted or stoned, or something happen to them. We would never know where something was going to happen.

Mr. Knoblock: I move the answer be stricken for the reason it is not responsive.

The Court: Go ahead and answer the question whether they refused to send a convoy at your request.



1080 A. They sent no convoy, no, sir, not at any time; not any time.

Q. I asked if they ever refused to send a detail to a point of disturbance?

Mr. Heyl: What do you mean?

Mr. Knoblock: Cars with deputy sheriffs in them.

Q. Did they ever refuse to do it, or did they ever fail to do it?

A. For example, at the time I called up Deputy Sheriff Vespa (if that is what his title is), they never got there. We had warning that that thing was going to take place down there. They never got there.

Q. Deputy Sheriff Vespa told you he would send a detail, didn't he?

A. Yes, he said he would.

Q. How do you know that detail never got there?

Mr. Heyl: I want to object. The evidence in this case shows they didn't get there until it was all over.

The Court: If he knows himself, he may answer.

A. I don't know myself that they got there or didn't get there.

Q. Now, you say you called the Hanna Clinic to take care of Dilley who was shot on the morning of January 2, 1942, is that right?

A. I said I asked the Hanna Clinic to send somebody down as quickly as possible to the Proctor Hospital to do whatever they could to help Mr. Dilley.

Q. Mr. Dilley, however, has his own private physician, who happens to be Dr. Fred Stiers?

A. So Dr. Burroughs told me after he returned.

Q. Dr. Burroughs performed no service?

A. Dr. Burroughs told me no services were necessary, the injuries were very slight.

1081 Q. It could not—But could it be that you sent Dr. Burroughs down there to secure information which might be useful to you later in a defense case in case Dilley sought to sue you for personal injuries and damages?

Mr. Heyl: I want to object to that question for the reason it isn't an intelligent question, and it is improper cross-examination.

The Court: I don't see any materiality, whether he did or didn't. What is the materiality to this case whether he sent a doctor, or didn't?

Mr. Knoblock: The reason I went into this is, I received

the intimation on direct examination it was a magnanimous gesture to take care of Dilley.

Q. You also sent your claim adjuster down there to interview Dilley, didn't you?

A. It is the policy of our railroad, whenever anybody gets hurt, anybody is hurt around the railroad, to render whatever medical assistance we can, whoever is hurt.

The Court: The question is, Did you send the claim adjuster down? That is the question before you.

A. I don't recall about that, sir.

Q. Did you regard Dilley as an employee on January 2?

Mr. Heyl: I object. That is immaterial.

The Court: I think that may be sustained.

Q. The two Brotherhoods in this case, Mr. McNear, representing your striking employees have agreed to arbitrate these problems that arise through—on the basis 1082 of this dispute, isn't that right?

Mr. Heyl: I object as not proper cross-examination, and immaterial.

The Court: Objection sustained. I don't see how we can go into that question of the right and wrong. Fortunately, or unfortunately, I can't pass on that.

Objection sustained.

Q. You have refused to arbitrate these problems?

Mr. Heyl: I object to that for the same reason.

The Court: Sustained. That isn't the question before us.

Mr. Knoblock: I think that's all.

The Court: Anything further with this witness?

Mr. Heyl: That's all.

The Court: Call the next witness.

(Discussion off the record.)

Mr. Knoblock: At this time I wish to make a statement in the record, and make it as an offer of proof, that the plaintiff in this case, through a verified complaint, sworn to by George P. McNear, Jr., president of the plaintiff, has alleged that he has acted in this matter in good faith, and that he has used all reasonable means and efforts to dispose of the matter in an amicable manner, and that we offer to show that the two Brotherhoods here representing the striking employees have, to the National Mediation Board, given their consent to arbitrate all of these problems, and to be bound by the findings of that arbitration board, and that the plaintiff be bound likewise.

1083 We further offer to prove the sending of two telegrams to the president of the plaintiff, George P. McNear, Jr., one of which telegrams was sent by the National Mediation Board, substantially as follows: "Acknowledging—"

Mr. Heyl: I object to trying to put evidence in by an offer. I should think he should state what he wants to ask Mr. McNear.

Mr. Knoblock: (Reading.) "Acknowledging your telegram of even date relative to strike of train, engine and yard employees of Toledo, Peoria & Western Railroad Company set for 6 P. M. today. Mediation Board has made every reasonable effort to adjust dispute under provisions Railway Labor Act. At Board's request employees have agreed to arbitrate this controversy. This method of adjustment will provide a fair, legal and definite disposition of the matter and will avert a strike. You have it within your power therefore to prevent interruption to traffic by also agreeing to arbitrate in accordance with the spirit of the Railway Labor Act. We believe that you as an employer should appreciate the work the Board has done and welcome an opportunity to arbitrate the dispute. The National Mediation Board has done all that in its judgment it may do under provisions of law."

The Court: What is that? A telegram?

Mr. Knoblock: Yes.

The Court: Telegram from whom to whom?

1084 Mr. Knoblock: Telegram from the National Mediation Board on December 28, 1941, to Mr. McNear. That was before the men went out on a strike.

Mr. Heyl: I want to object to it on the ground it is wholly immaterial, and does not tend to prove any issue in this case, and does not present any evidence that has any bearing.

Section 157, paragraph 1, of the Railway Labor Act provides that the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon said party by the terms of this chapter, or otherwise.

Therefore, it's immaterial whether this telegram was sent, or whether we agreed to arbitrate, because the statute itself provides that neither party is required to arbitrate, so how could it be material?

The Court: I think that is the law, gentlemen.

If we could compel arbitration in a case of this sort,

I suppose it would have been compelled a long time ago and might have avoided the thing that is before us now but, as I understand it, there is no way you can compel arbitration and, if you can't compel arbitration, by what right could I say it is a part of this particular case?

Mr. Knoblock: I say on his allegations of good faith.

The Court: How would you have good faith when a man has a right to refuse?

Mr. Knoblock: Under Title 29, Section 108, we maintain this is material before he is entitled to an injunction.

The Court: What?

Mr. Knoblock: That the arbitration of this matter is necessary before an injunction.

The Court: That he is compelled to arbitrate?

Mr. Knoblock: "That no restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or has failed to make every reasonable effort to settle such dispute either by negotiation or by the aid of any available governmental machinery of mediation or voluntary arbitration." It is here.

Mr. Heyl: You don't want to get twisted on the law at the beginning, Mr. Knoblock is twisted. He read the court a statute passed in 1932 which relates to labor disputes. This case is under the National Railway Labor Act, and the statute was passed in 1934, June 21, 1934. That is what governs, not interstate rules,—the Railway Labor Act.

What he read you is the general labor law, and has no bearing in this case.

Mr. Knoblock: For the record, what I read you is part and parcel of the Norris-LaGuardia Act. It is in the same supplement.

Mr. Heyl: But the Railway Labor Act controls interstate rules, and it was passed later.

The Court: I don't think we can pass upon that 1086 question. I don't see how I could.

The objection will be sustained, and the evidence will be denied.

Go ahead!

H. H. BEST, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. H. H. Best.

Q. Where do you live, Mr. Best?

A. 627 Commonwealth, Peoria.

Q. What is your age?

A. Forty-seven.

Q. What is your business or profession?

A. Superintendent of the operating department of the T. P. & W. Railroad.

Q. I will ask you if you had a conversation with the chief of police of the City of East Peoria at any time January 1 or 2, 1942.

A. 1st or 2nd? No.

Q. When did you have a conversation?

A. January 3.

Q. At what time?

A. About 10:30 A. M.

Q. That was before the restraining order was issued?

A. That's right.

1087 Q. Before it was filed? The bill or complaint filed?

A. Yes.

Q. Where did that conversation occur?

A. I was in the trainmaster's office, and he was in his office at the City Hall.

Q. Did he call you?

A. No, I called him.

Q. What did you ask him?

A. Asked him if he would afford us ample protection,—  
Mr. Knoblock: I object.

A. —for our trains over the crossing at East Peoria, that Superintendent Umshler of the P. & P. U. had just phoned me,—

Mr. Knoblock: I object.

Mr. Heyl: This is a conversation with the chief.

He is telling what Umshler told him.

The Court: This is a conversation with the chief?

A. That is right.

The Court: State what was said.

A. That Superintendent Umshler of the P. & P. U. said

that he had a cut ready to come to us, asking if we had protection. I told him I was going to call Chief Wright.

Mr. Knoblock: I object as improper.

Mr. Heyl: This is his conversation with the chief.

Mr. Knoblock: He didn't tell the chief he was going to call Umshler.

A. Yes, I did.

Mr. Heyl: You weren't there. He was there.

A. Superintendent Umshler asked me if we had 1088 ample protection, and I said no, that I was going to call Chief of Police Wright and find out from him, and that Mr. McNear informed me Mayor Brauns said we would have ample protection. Chief Wright told me he could not guarantee us ample protection, that they had trouble with the C. B. & Q. delivery the day before, which was January 2, and that two men had no show with forty or fifty pickets, that Mayor Brauns should not have notified Mr. McNear that he would be able to give ample protection, that he himself wouldn't do it, and he wouldn't ask his two men to do it because of the size of the crowd.

Q. Is that all he said?

A. Yes.

Q. Do you know how many men the chief had?

A. He told me two.

Q. What is the size, approximately, of the City of East Peoria?

A. I don't know.

Q. How many miles east and west in the city?

A. Probably three miles east and west.

Q. And how far north and south?

A. Two miles; a mile and a half or two miles.

Q. Any other railroads that pass through the Village of East Peoria?

A. Nickel Plate.

Q. Any other road?

A. Pennsylvania operates over the Nickel Plate track.

Q. How about the P. & P. U.?

A. They are in East Peoria.

Q. And how about the Illinois Terminal?

A. That's right. They do, too.

Q. Any other railroads?

1089 A. Illinois Central.

Q. Did the City of East Peoria ever afford any police protection to your trains?

A. No, sir.



Q. Or to your property?

A. No, sir.

Q. Was there ever an officer ever appeared at any time in the yards or any other place when there was any disturbance?

A. Not that I know of.

Mr. Heyl: Cross-examine!

*Cross-Examination by Mr. Knoblock.*

Q. Do you know of your own knowledge who is the chief officer of East Peoria? Mayor Brauns or Chief of Police Wright?

A. Chief of Police Wright, in my estimation, as far as I know.

Q. Is above and has more authority than Mayor Brauns?

A. I don't know.

Mr. Heyl: I object to that as a legal question.

Mr. Knoblock: I asked according to his opinion.

Q. And you say that you don't ever recall when the East Peoria police ever responded to a call on a disturbance?

A. Only when Zeke Merrill was injured.

Q. You have heard of that incident over there?

A. I understood Mr. Heyl in the movement of trains—

Q. You meant that you never knew of them conveying your trains, is that it?

A. Any protection to any train whatever.

Q. I am asking about conveying your trains.

1090 A. No, I have never known of them conveying our trains.

Q. You never knew any time when the City of East Peoria police refused to respond at the scene of a disturbance, do you?

A. Failed to respond?

Q. Yes.

A. I do not.

Q. The fact of the matter is, about the only thing you gentlemen asked them to do is convoy your trains, which they refused to do?

A. I did not ask for them to convoy trains. I asked for them to keep the crossings clear.

Q. This was on January 3, 1942, that you had that conversation with him, and at that time your company had about twenty-nine special agents in their employ, didn't they?

A. Possibly.

Q. Did you attempt to make the delivery with the protection of any of your special agents?

A. No, we didn't have enough special agents.

Q. You didn't have enough?

A. That's right.

Q. In your judgment, twenty-nine special agents could not handle a crowd of forty or fifty pickets, is that right?

A. We did not have the twenty-nine special agents in one spot.

Q. There were occasions when you had as high as eight in one spot?

A. No, not that I know of.

Q. You didn't know about that train going west south of the Allied Mills?

A. I wasn't present, and I don't know that eight special agents were in one spot.

1091 Mr. Knoblock: I see. I think that is all.

Mr. Heyl: I want to ask this witness another question which should be direct.

The Court: All right.

*Further Direct Examination by Mr. Heyl.*

Q. Mr. Best, do you know about how many employees the Toledo, Peoria & Western had on December 28, 1941, in the entire road? Approximately how many?

A. No, I do not.

Q. Now, this C. B. & Q. train that you referred to that was stopped, it was stopped how far from the front door of the City Hall of the City of East Peoria?

A. I was not there, Mr. Heyl. That was on January 2. I was in our yard.

Q. How far would the Main Street crossing be?

A. About a block.

Mr. Knoblock: I object; immaterial if he doesn't know where the train stopped.

A. Main Street crossing is about a block. Where we cross Main Street crossing is about a block.

Q. From the City Hall in the Village of East Peoria?

A. That's right.

Mr. Heyl: I want to recall Mr. McNear for one question.

1092 GEORGE P. McNEAR, JR., recalled, having been previously sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. Mr. McNear, can you tell the court the approximate number of employees that the T. P. & W. had in its system on December 28, 1941?

A. I don't recall at the moment, but I think somewhere around six hundred and fifty.

Q. How many employees were in the two Brotherhoods at the time this strike was called, approximately?

A. How many were in the Brotherhoods?

Q. How many were working for you that were members of the Brotherhoods that called the strike?

A. I don't know how many were in the Brotherhoods. I know how many people were in that branch of service.

Q. Give us that.

A. Something less than one hundred; somewhere around one hundred.

Q. And the rest of the employees are not on strike, are they?

A. No, sir.

Q. Can you give the court the approximate value of the property that's described in the investment described in the complaint in this case?

A. Just a minute. You asked for value.

Q. Approximate value of the investment as of the date of this strike, or approximately that date.

A. Well, the investment in our road and equipment, miscellaneous physical equipment, was approximately  
1093 \$4,600,000.00. In addition to that, we had a certain amount of working capital of about \$800,000.00.

Q. I am talking about the property.

A. The physical property is about \$4,600,000.00.

Q. Would that be approximately the value as of the date this strike was called.

A. The Illinois State Tax Commission thinks that the value is considerably more than that.

Q. Was that approximately the value at the date you have given? The date of this strike, in your opinion?

A. Well, when you begin to talk about value, you have to define whether it's so-called reproduction value or commercial value or taxed value or some other kind of value.

Q. What is shown by your annual report?

A. That is our book figure, which represents the cost at the foreclosure sale in 1926, plus additions and less retirements since that date. At the time of the foreclosure sale, the property was written down to about ten cents on the dollar.

Q. And the figure that you have given would be the replacement value as of the date of the strike, approximately?

A. Oh, no, the replacement value would be up around \$9,000,000.00.

Q. Now, will you tell the court what the annual payroll is, say for the year prior to this strike? Approximately?

A. The payroll was around a million a year.

Mr. Heyl: I think that's all.

The Court: Cross examine.

1094

*Cross-Examination by Mr. Knoblock.*

Q. Mr. McNear, you have given us some of the financial structure here of your company. I will ask you who owns the common stock of the Toledo, Peoria & Western Railroad.

Mr. Heyl: I object as immaterial.

Mr. Knoblock: You brought out the financial structure.

The Court: I think he may answer.

A. Railroad Securities Corporation. As of today's date?

The Court: I suppose.

Q. Yes.

A. Railroad Securities Corporation.

Q. And who owns that corporation or the stock of that corporation?

Mr. Heyl: I object to that as immaterial.

The Court: I don't see much materiality, but if its for the purpose of trying to test the credibility of this witness—I don't see any reason for either one of them.

Mr. Heyl: The purpose is to show the value.

Mr. Knoblock: You went into it. I think I have the right to cross examine.

The Court: I think he can answer. I don't see what difference it would make.

Q. What is the Prairie Schooner Company, a corporation?

The Court: What is that?

Mr. Heyl: I object to it as immaterial.

Mr. Knoblock: It has to do with this railroad.

The Court: We are going back in history.

Mr. Knoblock: This is current American history today.

Mr. Heyl: Back to '49.

1095 The Court: Has that anything to do with this railroad?

Mr. Knoblock: It has to do with its financial structure.

The Court: He may answer.

A. The Prairie Schooner Company was a holding company which owned all of the stock of the railroad in the year—prior to some date in December, 1941, and prior to that date, going back for several years.

Q. And who are the directors of that corporation as compared to the directors of your present corporation known as the T. P. & W.?

Mr. Heyl: I object as immaterial.

The Court: Yes, it is immaterial. Objection sustained.

Q. In the year 1940, what was the percentage of dividends on par value stock of your company?

Mr. Heyl: Objected to as immaterial.

Mr. Knoblock: You told what a big corporation it was, how much they owned, how many people they employed.

The Court: I think he may answer if that is for the purpose of the value of the property.

A. You asked for the dividends paid in the year 1940?

Q. No, percentage as compared to the value of the common stock.

A. I don't understand the question.

(Question read by reporter.)

The Court: What do you mean?

Q. I will put it this way: How many shares of common stock did you have outstanding in the year of 1941?

Mr. Heyl: Same objection.

1096 A. Fifty shares.

Q. What were their par value?

A. \$100.00.

Q. And how much dividends did you pay that year?

A. \$80,000.00.

The Court: Anything else, gentlemen?

Mr. Knoblock: Just a second, please!

That's all.

Mr. Elliott: That's all.

1097 Mr. Elliott: We call this witness as an adverse witness for cross-examination.

Mr. Knoblock: Who is this man?

Mr. Elliott: He is a member of the Brotherhood of Railway Trainmen, and was testified to yesterday as keeping the records of pickets, and where they were stationed. It is for the purpose of showing that.

J. W. BURKHALTER, called as an adverse witness by the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Cross-Examination by Mr. Elliott.*

Q. What is your name?

A. J. W. Burkhalter.

Q. Where do you live?

A. 200 Kenwood Avenue, West Peoria.

Q. Were you formerly in the employ of the Toledo, Peoria & Western Railroad?

A. I was.

Mr. Knoblock: I further object to the proceeding under Section 60 because this man is not a defendant.

Mr. Elliott: He's not a defendant.

Mr. Heyl: He's an officer.

Mr. Knoblock: He's not an officer in any way.

Mr. Elliott: We expect to show it.

1098 The Court: Can you show he is an officer?

Mr. Elliott: I expect to.

Mr. Heyl: It was testified by one of the defendants that he was the man that was keeping the records, and was chairman of the organization.

The Court: I will find out.

Are you a member of the defendant organization?

A. No, sir.

The Court: You are not?

A. I am not.

The Court: Did you keep any records down there at all?

A. No, sir, only that one; just a memorandum; it isn't a record.

The Court: You're not a member of any of these orders?

A. I do not belong to the Trainmen.



The Court: Do you belong to any other organization that is a defendant?

A. No, not any Brotherhood organization I do not.

The Court: You can examine him, but I don't see how you are showing he is an adverse witness.

Q. Do you know where the headquarters of the Brotherhoods that are defendants in this case were here in Peoria?

A. I do now.

Q. Where?

A. Jefferson Hotel.

Q. Have you been over at the Jefferson Hotel since the calling of this strike?

A. Part of the time, yes.

Q. In what capacity have you been there?

A. Acting chairman.

1099 Q. Chairman of what?

A. Of the meetings.

Q. Of the meetings of the men?

A. Yes, sir.

Q. Of what Brotherhood?

A. Well, supposed to be the B. of R. T., but I am not a member.

Q. But you were acting chairman of the members in their meetings over at the Jefferson Hotel?

Mr. Knoblock: I object to the leading of this witness.

The Court: What question do you want to propound?

Q. As chairman, did you or not keep any memorandum or record of the pickets and places where they were assigned from day to day?

A. From day to day only.

Q. And when did you being doing that?

A. I can't recall the exact date; sometime in January.

Q. Early part of January?

A. Yes, sir.

Q. In keeping that list, did you assign or show on the list the places that the pickets were assigned to?

A. Yes, sir.

Q. Have you produced, in pursuance to the subpoena that was served on you, those records?

A. Only one I have.

Q. Have you that one here?

A. I have.

Q. Will you please produce it?

A. That's a part of my record, and part somebody's else's.

Q. Part of your record, and this is the record you 1100 have produced pursuant to the subpoena, is it?

A. Yes, sir.

Mr. Elliott: I would like to have it marked "Plaintiff's Exhibit 22".

Mr. Knoblock: I object. This man stated he was not a member of either one of these Brotherhoods, and I don't see how any records he might keep would be evidence against or for them in any way.

The Court: He did state he acted as chairman up there.

Mr. Knoblock: Of the local men.

The Court: Evidently with their consent. I don't know whether it is material, but it seems to me, if he acted as chairman for the men, his evidence would be part of the records of the organization because they evidently had him there at least with their consent.

Q. By "the men", are you referring to the men out on strike?

A. Yes.

Q. How did you come to be chairman of meetings of those strikers?

A. Elected by the body of men that were there.

Q. And when were you elected?

A. I believe the night or the evening of December 28.

Q. That was the evening that the strike was called, was it not?

A. Yes, sir.

Q. Where was the election held?

A. Newdigate's home.

Q. Mr. Newdigate who is sitting here back of counsel?

A. That's the gentleman.

Q. Mr. Delmar Newdigate?

1101 A. Yes, sir.

Q. And you were elected as chairman of the men at that time?

A. Yes.

Q. Have you continued to act as chairman since that time?

A. With the exception of a few days.

Q. As chairman, what were your duties?

A. Conduct the meetings, open them and close them, and various things.

Q. Did you have anything to do with the assigning of pickets?

A. Some.

Q. Who attended those meetings?

A. The men that's on strike.

Q. Did Mr. Keiser or Mr. Coyle attend any of those meetings?

A. They did.

Q. Are Mr. Keiser and Mr. Coyle sitting here at the counsel table?

A. They are.

Q. And are the men that are sitting to the left of the aisle the men that attended these meetings, some of them?

A. As near as I can see, yes.

Q. And were there in attendance other men that are sitting here in the court room? Others out on strike that attended those meetings?

A. I can't recall any.

Q. Who was present at this meeting at Newdigate's home on the 28th of December?

Mr. Knoblock: I object to this.

The Court: Objection sustained. I don't see where that is material. You want to show certain men were pickets and, if that's material, all right. They had a right to meet.

1102 Q. Were you on duty as chairman on January 1?

A. I think not. I was on duty, but had nothing to do with any assignments.

Q. Did you have anything to do with the assignment of pickets on January 2?

A. I can't say. I don't remember.

Q. That was the day after New Year's.

A. I believe I did.

Q. Who were present at the time you had that meeting when pickets were assigned on January 2?

A. I can't say as to all that was present.

Q. Can you name some?

A. I know Brother Coyle and Brother Keiser were there. I distinctly recall that, but the others I do not know.

Q. Did they take part in the assignment of pickets?

A. No.

Q. Who selected the pickets?

A. They are selected off the seniority list.

Q. Did you make a list of the pickets each day you were chairman?

A. I did.

Q. Were those pickets assigned to various places?

A. I think so.

Q. Do you know whether they went to the place they were assigned or not?

A. I do not.

Q. What are the records of the assignment of pickets beginning December 28, down to and including January 12, 1942?

A. I cannot say.

Q. What, if anything, did you do with those records?

1103 A. I didn't keep them as any value; threw them away.

Q. You threw them away?

A. Yes, sir.

Q. How did you destroy them?

A. Wadded them up, and threwed them in the wastebasket.

Q. Is this list which is marked "Plaintiff's Exhibit 22" which you have produced the only record that you now have that has not been destroyed?

A. That record happened to be there, due to the absence of my not being at the meeting. I wasn't there at that date.

Q. You brought this in pursuant to subpoena?

A. I made that as a memorandum of who took my place.

Q. You made this Exhibit 22 as a memorandum of who took your place?

A. Yes, sir.

Mr. Knoblock: I object to the form of this question.

The Court: Tell what he did about it.

Q. What did you do with reference—

The Court: How did you happen to make it?

A. How did I?

Q. Yes. Who made this record, Exhibit 22, that you have produced?

A. I said I made part of it.

Q. What part of it did you make?

A. That is my writing (indicating), and that is somebody else's writing, I don't know whose (indicating).

Q. The second column on the top row is your writing?

A. Yes, part of it. That isn't (indicating).

Q. Which one isn't?

A. That isn't right there (indicating). That's my  
1104 writing that has been scratched off.

Q. Is the original writing of those names all in your handwriting?

**MICRO CARD**  
TRADE MARK **®**

**22**

**43**

**20612**



**63**



A. They are not.

Q. Which ones are not in your handwriting?

A. That one (indicating) and that one there (indicating), that one there (indicating).

The Court: Who are they?

Q. All but seven are in your handwriting; are they?

A. And these two (indicating).

Q. All but nine are in your handwriting?

A. Yes.

Q. In whose handwriting are the nine?

Mr. Knoblock: Object as having been asked and answered.

The Court: If he knows. Do you know?

A. No.

Q. And you do not have, and have not produced in this court, the record of the pickets as assigned from December 28, 1941, up to and including January 12, 1942, have you?

A. No.

Q. They have been destroyed?

A. Well, I don't know as you would call it "destroyed". They have been disposed of.

Q. You rolled them up and threw them in the waste-basket, didn't you?

A. Yes, sir.

Q. And didn't keep them?

A. No, sir.

Mr. Heyl: I want the subpoena served on this man.

The Court: I don't think there is any question.

Mr. Elliott: He was subpoenaed to bring all records with reference to pickets.

The Court: He said he didn't have them.

Mr. Elliott: We offer PLAINTIFF'S EXHIBIT 22.

The Court: What is it?

Mr. Elliott: List of pickets and places.

Mr. Knoblock: We object as being immaterial.

The Court: Cross examine!

Mr. Heyl: We now submit, in view of the answers of the witness, that he was elected chairman by all these Brotherhoods, that he is properly examined as an adverse witness.

The Court: He answered about all the questions. I think you can call him adversely if you want to.

Mr. Knoblock: I don't think there is any cross examination.

Mr. Elliott: Any objection?



Mr. Knoblock: Immaterial, irrelevant, unnecessarily burdening the record, and not proving anything.

The Court: You mean prior to the time—

Mr. Knoblock: That is made January 13.

Mr. Elliott: This is subsequent to the date. The record previous to the restraining order was destroyed.

The Court: This is since?

Mr. Elliott: Yes.

The Court: What is the purpose? They had a right, under that restraining order.

Mr. Elliott: We are not contending that.

The Court: What is it for?

1106 Mr. Elliott: My purpose is simply this: I asked him in the subpoena to bring in the other records, all of the records, and this is the only one he brought, saying the others had been destroyed.

The Court: There is no showing of any violation of the restraining order.

Mr. Elliott: No, we are not contending for that.

Mr. Heyl: We ask that the records be brought in, and he brings in only one, and says the others have been destroyed.

Mr. Knoblock: What is the matter with that?

Mr. Heyl: You know what the courts have held about the destruction of records.

The Court: Is that all?

Mr. Elliott: Yes.

The Court: It may be admitted.

1107 ROBERT G. SPRAGUE, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Mr. Knoblock: I object to any testimony from this witness. I understand he is admitted to practice law.

Mr. Elliott: He is not of counsel in this case.

The Court: I think that only goes to a man's credibility if he is a lawyer!

Mr. Elliott: He is not of counsel.

Mr. Knoblock: He was sitting here all the time.

The Court: He may testify.

Mr. Elliott: I stated to the court, and the court said he could.

The Court: I think it was permitted at the time. Go ahead and examine.

Q. What is your name?

A. Robert G. Sprague.

Q. Where do you live?

A. 107 Edgehill Court, Peoria.

Q. What is your occupation or profession?

A. I am an attorney employed by the Toledo, Peoria & Western Railroad.

Q. In the office?

A. In the office of the railroad.

Q. You are not of counsel in this case?

A. I am not, no.

1100 Q. You are a regular employee of the railroad?

A. I am.

Q. How long have you been employed by the railroad?

A. Two years.

Q. Do you have charge in your department of the labor relations of this railroad with its employees? Is it in your department?

A. Our labor negotiations are handled by Mr. Best, the superintendent of the railroad, but I cooperate with him in that matter.

Q. Now, have you been present at all of the meetings and negotiations between the railroad and its employees, or the representatives of the employees, since November 4, 1940?

A. I have been present at all meetings, with the exception of two or three meetings which were short meetings, and at which very little took place.

Mr. Knoblock: I object to the latter part, and move it be stricken.

The Court: Yes, it may be stricken. If he wasn't there, he wouldn't know.

Q. I will ask you if, prior to October 4, 1940, if your railroad had a contract with either the Brotherhood of Railway Trainmen or the Brotherhood of Locomotive Firemen and Enginemen who are defendants in this case.

Mr. Knoblock: Objected to as immaterial and irrelevant.

Mr. Heyl: It is material.

The Court: Where is the materiality?

Mr. Heyl: We have to show, Your Honor, in connection

with this complaint, what was done with reference to mediation and settlement of this dispute.

1109 The Court: If you go into that, we will have to go into all of it.

Mr. Knoblock: There will be an awful lot to be said by many witnesses.

Mr. Heyl: We are obliged to show what we did after the election of representatives.

Mr. Knoblock: You are talking about the election of 1940?

Mr. Heyl: That is when the election was.

Mr. Knoblock: What has that to do with the case at bar?

Mr. Heyl: We have to show after the election we dealt with these representatives.

Mr. Knoblock: You say you don't have to arbitrate.

The Court: You dealt with the representatives of the two organizations?

Mr. Elliott: Yes.

The Court: I think you are entitled to show that. I thought you were going to show what they did by way of settlement.

Go ahead!

(Question read by reporter.)

The Court: You may answer "yes" or "no".

A. There has been no such contract in effect while I have been with the railroad.

Q. Were you with the railroad at that time?

A. I have been with the railroad since December of 1939.

Q. Were you with the railroad when an election was held on October 4 and 5, 1940, which election was held under the provisions of the Railway Labor Act?

A. Yes, I was.

1110 Q. Now, was there or not a representative of the National Mediation Board present to conduct that election?

A. There was.

Q. What was his name?

A. John F. Murray.

Q. Following that election, did you receive any communication from Mediator Murray with reference to the result of the election?

A. We did.

Q. Will you please produce that letter?

A. (Witness complies.)

Q. You have handed me a letter which is signed by John F. Murray, which the reporter has marked "Plaintiff's Exhibit 23". Is that the original that you received?

A. That is.

Q. With the envelope attached?

A. With the envelope in which the letter reached us.

Mr. Heyl: Now we offer in evidence, in connection with the testimony of this witness, this original letter which has been marked "PLAINTIFF'S EXHIBIT 23".

Mr. Knoblock: May I ask what is the purpose?

Mr. Heyl: And I would like to have permission, if the letter is admitted, to substitute a true copy which has also been marked by the reporter.

The Court: Submit it to counsel, and go ahead with this witness.

Anything further with this witness?

Mr. Heyl: Yes.

The Court: Go ahead! Is there any objection to it?  
1111 Mr. Knoblock: I would let them shorten it up if they will ask him how—

The Court: If you want it admitted in evidence—and copy may be substituted if counsel is satisfied the copy is correct.

Mr. Knoblock: We want to compare it.

Q. Was there another election held of the—any other group following that?

A. Yes, there was an election held among locomotive firemen, hostlers and hostler helpers employed by the railroad on October 5 to 7, 1940.

Q. And was that a run-off election?

A. No, that was not a run-off election. That was an original election.

Q. Was there another election held after that, or was that the last one?

A. There was another election held on October 10 and 11, 1940, among locomotive engineers and employees of the railroad. That was not a run-off election. That was the first election among the engineers.

Q. Was there a second election among the engineers?

A. No, there was not a second election among the engineers.

Q. Were there any other elections held after that?

A. There was an election subsequently held as a run-off election among the conductors.

Q. Now, did you receive a notice from the mediator, Murray, with reference to the election held October 5 and 6?

A. Yes, we did. Pardon me! That was October 5 to 7.

Q. And the notice is dated October 11, 1940, relative to the election of the locomotive engineers?

A. Yes.

Q. Did you receive any other notice from Mediator Murray with reference to any other election?

A. We received a notice from Mediator Murray dated November 28, 1940, relative to an election of road conductors held November 27 to November 28, 1940.

Q. Now, was that the last notice you received from Mediator Murray with reference—

A. With reference to the election's result.

Q. —with reference to the representatives?

A. Yes.

Q. Who were the representatives selected?

A. I will have to refer to the report of election results. I don't have the first one I testified concerning. According to the reports given to us by Mediator Murray, the results of these elections were as follows: As to the election for road conductors, road trainmen and yard men held October 4 to 5, 1940, the conductors tied between the Association of Train Service Employees of Toledo, Peoria & Western Railroad and the Brotherhood of Railroad Trainmen. The trainmen and yard men selected the Brotherhood of Railroad Trainmen as their representative.

In the election held October 5 to 7, 1940, among locomotive firemen, hostler and hostler helpers, the Brotherhood of Locomotive Firemen and Enginemen was selected.

In the election held October 10 to 11, 1940, among locomotive firemen, the Brotherhood of Locomotive Firemen and Enginemen was selected; and in the election held November 27 to November 28, 1940, among road conductors, this being the run-off election, the Brotherhood of Railroad Trainmen was selected.

Q. These reports or notices of election results from John F. Murray, Mediator, National Mediation Board, in every instance, were they or not, the same as the exhibit which has been identified as Plaintiff's Exhibit 23, except



referring to the appropriate election? Were they in the same form.

A. They are in similar form.

Mr. Heyl: I am not offering them because of the oral testimony so as not to encumber the record.

The Court: All right.

Q. Following receipt of the last notice or report of Mediator Murray, what did the railroad, Toledo, Peoria & Western, do with reference to meeting with representatives of these Brotherhoods who were selected in the elections to negotiate for the men?

A. Well, if I may answer in a way that doesn't quite answer your question: Prior to the notice, last notice, and following the receipt of each notice from Mr. Murray, we served notice upon the respective Brotherhoods of our intention to change rates of pay, rules and working conditions applicable to the employees of the railroad represented by the Brotherhoods.

Q. Did or not the Brotherhoods serve similar notices on you with reference to their position?

A. They did, with one exceptions.

Q. What's that?

A. We did not receive a notice from the Brotherhoods as to intended changes for conductors following the run-off election.

Q. But you did receive the notice of changes as to all other employees, is that right?

1114 A. As to all other groups of employees, we did.

Q. Following the date of the giving of those notices, will you give me the date of the first meeting between the representatives of your railroad and the representatives of the employees?

Mr. Knoblock: We object as immaterial to this matter in dispute.

The Court: Read the question.

(Question read by reporter.)

The Court: I think he may answer.

A. The date of our first meeting was November 4, 1940.

Q. And just let me ask you one question I should have asked before that: Before the first meeting that you had with the representatives of the Brotherhoods, did you or not receive the official certification from the Mediation Board at Washington, D. C. of these elections, and the



certifications of the representative of each of the Brotherhoods in question?

A. We had not at that time received the official certification for conductors because the run-off election had not been held. We had received the certification as to all other groups.

Q. Did you, following the run-off election, receive the certification of that group?

A. We did.

Q. From that time on, what representatives of the employees of your road did you recognize and negotiate with?

A. At all times since the receipt of these various notices from Mediator Murray, subject to the qualification as to road conductors which I will refer to later, we recognized the Brotherhood of Railroad Trainmen as the representative for conductors, brakemen and yard men or yard conductors and yard brakemen, as they are 1115 sometimes called. We recognized the Brotherhood of Locomotive Firemen and Enginemen as representative for engineers, firemen, hostler and hostler helpers. We also recognized the Brotherhood of Railroad Trainmen as the representative for switch tenders. They were designated as the representative for those employees.

Q. After the run-off election, whom did you recognize and deal with as representative for that group?

A. The Brotherhood of Railroad Trainmen for conductors.

Q. Did you, at any time subsequent to the date of receiving notice of the result of the election, deal with any other representatives except the representatives who were designated in these elections? Do you understand my question?

A. I understand your question. We certainly did not for the purposes of collective bargaining and, as far as I can recall at the present time, we did not for any other purpose relating to labor conditions or rules or pay.

Q. You stated that the first meeting was 11-4-40 between your railroad and the representatives of the employees. Were there any other representatives of the Brotherhoods who attended the meetings, in addition to the local representatives of the Brotherhoods?

A. Well, the deputy presidents or vice presidents of the national organizations also attended those meetings, together with the local representatives. The local representatives did not attend all meetings, however.

Q. Who were the national representatives?

Mr. Knoblock: I object to this as immaterial.

The Court: I think he may answer if he knows.

1116 A. The national representatives, was that your question?

Q. Yes.

A. The national representatives changed from time to time as negotiations went on. At the beginning of our negotiations in the fall of 1940, Mr. Keenan represented, or stated that he represented, the Brotherhood of Locomotive Firemen and Enginemen.

The Court: I think the objection will be sustained.

Q. Did you continue negotiating with the men until a certain date? Having meetings with them?

A. Yes, with interruptions from time to time.

Q. Where were the meetings held?

A. In the office of Mr. H. H. Best, the superintendent of the railroad.

Q. Who fixed the time and place of meetings?

A. That was agreed upon between the parties at each previous meeting.

Q. That was true all through?

A. With the exception of the first meeting, the time of some of those meetings were established by letter.

Q. After March 17, 1941, was there an additional party in these conferences?

A. March 17, 1941? Mr. John F. Murray, a mediator from the National Mediation Board, took part in the conferences from that time on.

Q. Did that continue down until the 7th day of November, 1941?

A. That did. I believe there was only one conference in that entire period which Mr. Murray did not attend.

Q. I will ask you if you have prepared a memorandum showing the date, duration and those present in all conferences with the Brotherhood representatives and the Mediation Board, beginning with the first meeting  
1117 and ending with the last meeting with the mediator on 11-7-41?

A. I have.

Q. And is that document marked "Plaintiff's Exhibit 24"?

A. It is.

Q. And does that truly and correctly set forth the facts with reference to the meetings, time and duration of the

meetings, and the names of the persons present, and the group or persons represented by those present?

Mr. Knoblock: I certainly wish to object to that (it certainly is not the best evidence) until we have had time to look at it. This witness's is the best testimony. You know that. We can't cross-examine on that record.

Mr. Heyl: I think you can.

Mr. Knoblock: You mean to put testimony in by this sort of compilation when he is available to testify?

Mr. Heyl: He can go through it meeting by meeting.

Mr. Knoblock: Let us examine it and we may have no objection.

The Court: You are offering it? What is the last question? Anything else?

Mr. Knoblock: May we have a copy of this to inspect?

Mr. Heyl: I am not through with the witness yet.

Mr. Knoblock: Do you have a copy that we can have so we can look it over tonight?

Mr. Heyl: Yes.

The Court: You want an opportunity to examine that before you cross-examine. Is this your last witness?

1118 Mr. Heyl: I think it is.

The Court: I was hoping we could close this tonight, but I think you are entitled to that, and, if you want that, I will call you back tomorrow morning. I understand this is the last witness.

Mr. Heyl: I think so, but I would like to recall anybody for anything I have overlooked, but it will be brief.

The Court: If it is technical, that is all right, but I don't want to go back in evidence.

Mr. Heyl: No, I won't do that.

The Court: We might as well adjourn at this time.

Mr. Heyl: We are not through with this witness.

The Court: I understand that.

Have you any other documents to submit to this witness?

Mr. Elliott: Original letters from the Mediation Board.

The Court: If that is the position we are in, I take it that will close the testimony on the part of the plaintiff. Will you be in a position to proceed at that time?

Mr. Knoblock: We would be in a position to proceed with certain motions that we will have.

The Court: You will have them ready at that time?

Mr. Knoblock: But, as far as our testimony is concerned, we would like to have a little time.

The Court: I think at this point we can almost say that this is about all the evidence on the part of the 1119 plaintiff, with the exception of some letters attached to the complaint. Then your motion will be prepared, and you will be ready to proceed upon that.

This afternoon you seemed to think you are entitled to go into the question of arbitration as showing good faith. I would like for both sides to furnish — é with authorities that will support you or not support you on that point. I may be wrong. I didn't think this should be tried any other way. Of course, the Norris-LaGuardia Act is a part of this proceeding, but I didn't believe this court could go into the question of good faith because the plaintiff wouldn't arbitrate. I understand he wouldn't arbitrate. It isn't before me, but I understand that is true. It didn't seem I could try this question in this case, and you contend I can. I ask you to bring in any authorities.

Mr. Heyl: There are no cases under that section of the statute. That is a result of my search.

The Court: It take it at this time we can adjourn until tomorrow morning at 10 o'clock.

Trial Adjourned at 5 o'clock P. M.

1120

January 15, 1942.

Trial resumed at 10 o'clock A. M.

Appearances:

Same as before.

ROBERT G. SPRAGUE, having been previously sworn, resumed the stand and testified further as follows, in answer to

*Direct Examination by Mr. Heyl.*

(Question—page 1026—read by reporter.)

Mr. Knoblock: There is no objection.

The Court: All right!

A. To the best of my information and belief, it does.

Q. And you were present at all the meetings?

A. With the exception of one or two conferences.

Mr. Heyl: We now offer in evidence the papers marked

"PLAINTIFF'S EXHIBIT 24" which has been referred to by the witness.

The Court: Any objection, or do you desire to cross-examine?

Mr. Knoblock: No.

The Court: It may be admitted.

Q. Did the negotiations with the Mediation Board terminate?

A. Well, of course, the negotiations were with the representatives of the Brotherhoods in the presence of the mediator.

Q. Yes. The services of the National Board, did they terminate?

1121 A. The services of the National Board were terminated by letters dated November 21, 1941.

Q. Have you the letter from the National Board dated prior to March 17, '41, advising you that the Mediation Board would take charge of the mediation?

A. Yes. I have two letters from the National Mediation Board dated January 14, 1941.

Q. I show you two letters dated January 14, 1941, the first one marked "Plaintiff's Exhibit 25" and the second marked "Plaintiff's Exhibit 26." Will you please state whether or not these original letters that I now hand you were received by the plaintiff from the Mediation Board?

A. These letters were received by the plaintiff on the 15th day of January, 1942.

Q. '42 or '41?

A. '41, yes.

Mr. Heyl: I offer in evidence the two exhibits, and ask to submit, in lieu of the originals, a copy.

The Court: They may be considered as offered.

Go ahead!

Q. Have you the letter of the Board with reference to the termination of mediation?

A. I have two letters from the National Mediation Board, dated November 21, 1941.

Mr. Knoblock: What is that date?

A. November 21, 1941, which I now hand you.

Mr. Heyl: These are offered.

Mr. Knoblock: No objection.

1122 The Court: They may be admitted.

Mr. Heyl: And copies substituted?

The Court: And copies substituted. That is what?

Mr. Heyl: Plaintiff's Exhibits 25 and 26.



Q. You have handed me two letters dated November 21, 1941, which the reporter has marked for identification "Plaintiff's Exhibit 27" and "Plaintiff's Exhibit 28." Are these the original letters received from the National Mediation Board terminating the services of the Board?

A. They are.

Q. And when were these letters received by the plaintiff?

A. These letters were received by the plaintiff—

Mr. Knoblock: I can't hear that.

Q. When?

A. These letters were received by the plaintiff January 15, 1941—1942, pardon me!

Q. I am talking about the other two letters.

A. These letters were received by the plaintiff—the letter in case A-904 on the 24th day of November, 1941, and the letter in case A-903 on the 27th day of November, 1941.

Q. These are the original letters as received by you, are they?

A. They are.

Mr. Heyl: The plaintiff offers in evidence the two letters, PLAINTIFF'S EXHIBITS 27 and 28, and asks the privilege of submitting a copy of the exhibits.

There is no objection to these, Your Honor.

The Court: They may be admitted.

Mr. Heyl: May I substitute copies?

1123 The Court: On comparison.

Q. Mr. Sprague, will you tell the court what, in a general way, was discussed at each of the meeting shown as having taken place on Plaintiff's Exhibit 24?

A. May I have the exhibit? (Witness examines same.)

Q. I don't ask for a detailed statement of each meeting, but the general type of discussion, general subject.

A. The meetings—At the early meetings on the 4th and 14th of November, and 3rd and 4th days of December, 1940, very little was discussed other than the date of the future meetings, and an arrangement was made for future meetings. On the 17th of December we handed to the Brotherhood of Railroad Trainmen—

Q. What year is that?

A. 17th of December, 1940, we handed to the Brotherhood of Railroad Trainmen representatives our proposed schedules of rules and working conditions and rates of pay. On January 7, 1941, we handed to the Brotherhood of Locomotive Firemen and Enginemen representatives



our proposed schedule of rates of pay, rules and working conditions. On January 8, 1941, we briefly discussed the general principles of the proposed schedules of rates of pay, rules and working conditions submitted by the railroad and submitted by the Brotherhoods. At the end of that conference, the Brotherhood representatives informed us that they could not accept anything in our proposals, and could not change anything in their proposals, and we informed them that we could not see our way clear to accept their proposals as written. These representatives then informed us that they would find it necessary to invoke the services of the National Mediation Board.

1124 Q. Following that, these services of this Board were invoked, and continued down until November, 1941, is that correct?

A. The mediator first arrived on the 17th day of March, and the mediator was present at all conferences from that day until the termination of conferences in November. We held conferences almost continuously from the 17th of March, 1941, until the 15th of April, 1941.

Q. Then what happened the 15th of April?

A. On the 15th of April—For two or three days prior to the 15th of April the mediator had been conferring with us alone without the presence of the Brotherhood representatives. On the 15th of April he informed us that if we could make certain changes in the proposals we had submitted, and suggest what rates of pay we would be willing to pay above standard, he believed that there was a good possibility that we could reach an agreement. We therefore asked the mediator for a suspension of mediation for a period of thirty days to enable us to prepare an amended proposal. At the end of the thirty day period, we notified the Mediation Board and the Brotherhoods that this amended proposal was ready for submission. Prior to this time, the Mediation Board had notified us that mediation was suspended indefinitely. The Mediation Board informed us that a mediator was not available, and that they would inform us when one was available. We wrote to the Mediation Board three times in the next three or four months, asking the resumption of mediation, and received the same response each time. The mediator finally returned to Peoria on the 7th day of September—

Q. What year?

A. —1941, and conferences were resumed at that time, and continued almost continuously until the

17th day of October, 1941. At that time, we asked that mediation be suspended for a week or so in order that we might prepare further amended schedules. Mediation was suspended. We prepared amended schedules, and mediation was resumed again on the 3rd day of November, 1941.

Mr. Knoblock: I didn't get that.

A. The 3rd of November, 1941, on which date we submitted to the Brotherhoods our revised amended proposals. We then held conferences for several days, and I believe it was the 6th day of November that the Brotherhoods informed us that they could not agree to our proposals. We then asked the Brotherhood representatives to suggest a rate of pay for which they would be willing to agree to the rules and working conditions we had proposed. On the 7th of November they returned and informed us—

Q. 1941, is it?

A. Yes.

Q. Will you give the year each time?

A. On the 7th day of November, 1941, they returned and informed us that they could not state a rate of pay for which they could accept our rules and working conditions, the rules and working conditions which we had proposed. The mediator then handed us arbitration proposals in each case.

Q. What did you do?

A. The mediator informed us when he handed us these proposals that he wished us to reply to the Mediation Board in Washington at the earliest possible date.

Q. Was that a joint proposal to both sides?

A. That was a joint proposal to both sides.

Q. Was arbitration agreed upon by both sides?

1126 A. Arbitration was declined by both sides.

Mr. Knoblock: What date is that?

Q. What was the date of that?

A. We wrote the National Mediation Board on the 17th day of November, 1941, suggesting to the Board that some impartial fact-finding commission be appointed to consider the matters involved in this dispute, and stating further that we could not see our way clear to agree to arbitration.

Q. When did the Brotherhoods respond with reference to the suggestion of the Mediation Board of the joint arbitration agreement?

Mr. Knoblock: I didn't get that question.

The Court: Read the question.

(Question read by reporter.)

A. On November 21, 1941, the National Mediation Board wrote us, informing us that their efforts to settle the controversy by mediation had been unsuccessful, and informing us that mediation had been terminated as of the date of that letter. Attached to the letter was a copy of letters received from the Brotherhoods, declining arbitration.

Q. And that was dated November 21, 1941, was it not?

A. The letter from the Mediation Board, yes, sir.

Q. And is that the exhibit 27 and 28?

A. Yes.

Q. And attached to that exhibit, as a part of it, is a copy of a letter dated November 8, 1941, signed by W. C. Keiser, vice president, B. of L. F. & E., addressed to the secretary of the Mediation Board, isn't that right?

1127 A. That copy is attached to Exhibit 28, which has reference to case A-904 concerning engineers and firemen and hostlers.

Q. To Exhibit 27 is attached a copy of a letter from F. W. Coyle, vice president, B. of R. T., dated the same date and addressed to the secretary of the National Mediation Board?

Mr. Knoblock: What is that date?

Mr. Elliott: November 8.

A. Yes, and that letter has reference to case A-903 involving conductors, brakemen and switch tenders.

Q. As I understand it, so far as the docket of the Mediation Board is concerned, there were two cases, one being case A-903, being the Brotherhood of Railroad Trainmen, and case A-904 related to the Brotherhood of Locomotive Firemen and Enginemen, is that correct?

A. That is correct.

Q. And that designation on these exhibits refers to two separate cases?

A. Yes.

Q. Were the negotiations conducted jointly by the two Brotherhoods and your representatives in all your meetings?

A. Not in all the meetings. There were some meetings at which the mediator would talk to the Brotherhood representatives for part of the day, and with the railroad representations for the remainder of the day, and at some of

those meetings the cases were considered separately. Generally speaking, however, the negotiations were joint.

Q. As I understand it from you, these letters attached to the two exhibits under date of November 21, 1941, of the National Mediation Board's letter to you,—is at 1128 tached a letter from each of the Brotherhoods dated November 8, 1941, in which each Brotherhood declines arbitration, is that correct?

A. That is correct.

Q. Will you state, Mr. Sprague, if you can, if there was any difference in the position of the Brotherhoods and the attitude of the Brotherhoods with reference to arriving at an agreement when the mediation proceedings were resumed in September or October, 1941, than they were when you discontinued or took a recess in April, 1941?

A. When mediation proceedings were suspended on April 15, 1941, we had received the understanding from the mediator that there was a good possibility of our reaching an agreement, provided that we made certain adjustments in our schedules, which we attempted to do. When proceedings were resumed on September 7, 1941, no consideration whatever was given to what had taken place before. Strangers attending the conference in September might well have understood that there had been no prior meetings.

Mr. Knoblock: I object to that.

The Court: Yes, objection sustained.

Q. Don't state it that way. State the facts with reference to it.

A. The fact was, we started anew in September. No consideration was given to the prior conferences or to the understandings we had reached with the mediator.

Q. Was that on behalf of the two Brotherhoods? Was that the attitude?

A. Yes, that was the attitude of the Brotherhood representatives.

Q. Now, was there ever any time subsequent to the notification of the result of the elections held in 1940 that this plaintiff, the Toledo, Peoria & Western Railroad, 1129 refused to negotiate for the purpose of arriving at a contract with the representatives selected at those elections?

Mr. Knoblock: Wait just a minute. I object. He already testified they declined on November 17, 1941.

Mr. Heyl: Declined to do what?

The Court: Arbitrate.

Mr. Knoblock: Arbitrate.

The Court: I think he may answer if they refused to negotiate.

A. No, we never refused to negotiate after being notified of the results of the elections.

Q. Have you, at any time since the elections have been—that have been referred to in your testimony, negotiated with any representative of either Brotherhood, other than those designated at the elections, or any other person for the men?

A. Well, of course, at the elections these Brotherhoods were designated as the representatives for the men.

Q. That's right. Did you deal with anyone else except those Brotherhoods as the representatives?

A. No, sir, not with respect to the men represented by the Brotherhoods.

Q. There was a change from time to time in the personnel of the representatives of the various Brotherhoods, was there not?

A. There was.

Mr. Knoblock: I didn't hear the question and answer.

The Court: Read it.

(Question and answer read by reporter.)

Q. Now, Mr. Sprague, after the Mediation Board 1130 advised you under date of November 21, 1941, that its services were terminated, what further effort with reference to the appointment of a tribunal to dispose of this dispute was made by the company? What effort did you make to have someone else appointed?

A. We were in communication with the National Mediation Board from time to time after that date, and we repeatedly suggested to the National Mediation Board that the dispute be referred to an emergency board appointed by the President.

Q. As provided in the Railway Labor Act?

A. As provided in the Railway Labor Act. This was in addition to our other suggestion that an impartial commission be appointed to examine the dispute.

Mr. Knoblock: Wait just a minute. I would like to get this down. Emergency board appointed by the President under the Railway Act?

A. Railway Labor Act.

Mr. Knoblock: All right.

A. This was in addition to our other suggestion that an



impartial commission be appointed to examine the questions involved in the dispute, which commission would be given ample time to thoroughly consider all problems involved.

Q. What was the reply to your request that this matter be referred to an emergency board, as constituted by the terms of the Railway Labor Act?

A. Well, the Mediation Board never committed itself to us on the matter of the appointment of an emergency board.

Q. Have you the following telegrams dated 12-18, 12-20 and 12-28?

Mr. Elliott: 1941.

Q. 1941, yes.

1131 A. I have mimeographed copies of those three telegrams.

Q. I hand you Plaintiff's Exhibits 29, 30 and 31, and ask you if these are telegrams sent to the National Mediation Board on December 18, December 20 and December 28, 1941, relating to the matter in issue in this case.

A. These are mimeographed copies of three telegrams sent to the National Mediation Board on the dates referred to.

Q. Are they true copies of the telegrams that were sent?

A. They are true and correct copies.

Mr. Heyl: We offer these three exhibits in evidence.

The Court: Let's proceed with this witness. I will give you an opportunity to examine them. I think we might proceed at this time.

Mr. Knoblock: All right.

Q. Now, Mr. Sprague, do you know when you received notice of the call of the strike which was to be effective on December 28, 1941, at 6 o'clock P. M. on that date? When did you receive that notice?

A. There are two notices which should be referred to in that connection.

Q. All right, just refer to them.

A. The first notice we received from the Brotherhoods was a letter dated December 8, 1941, and received by the railroad at 11:44 A. M. on the same day, notifying the railroad that a strike had been called for 11 A. M., Tuesday, December 9. As to the actual effective date of the strike, we received a letter dated December 27, 1941, which was received at 11:15 A. M., December 28, 1941, inform-



ing the railroad that a legal strike would take effect 1132 at 6 P. M. on the evening of the same day.

Q. The first notice that you referred to was not effective because of a request of the Mediation Board that the strike be postponed, is that correct?

A. The strike was postponed by the Brotherhoods and, as far as I know, it was because of the request of the Mediation Board.

Q. The strike that is now in force was called and you were notified, as you have just stated, on December 28, 1941, is that right?

A. That is correct.

Q. What did you do following that with reference to inviting all of the employees affected by that strike to return to their places of employment?

A. On Monday, December 29, 1941, we served notice personally upon—

Mr. Knoblock: You served what?

A. We served notice personally upon each member of the classes of employees involved who could be found. There were a few who were not available. This notice directed these employees to report for work at 9 A. M., Tuesday morning, December 30,—

Q. 1941?

A. —1941, and advised them that failure to so report would result in termination of their employment.

Q. Did they return, those that went out on a strike?

A. I do not have the records as to how many. I believe that one or two returned. The remainder did not.

Q. The plaintiff is an Illinois corporation organized under the Railway Act, is it not? The T. P. & W.?

A. It is a corporation organized under the Illinois statutes.

Q. And under the railway statutes of Illinois?

1133 A. Yes.

Q. And it is the railroad that is operated over the line that has been described in this case between Keokuk, Iowa, and Effner, Indiana?

A. Yes, and Lomax, Illinois.

Q. And a branch to Lomax?

A. And a branch to Lomax.

Q. And a branch to Warsaw?

A. Yes.

Q. Your main office is at the Union Station in Peoria?

A. Yes, it is.

Q. And the shops and yards are in East Peoria, Tazewell County, is that right?

A. Partially in East Peoria and partially just beyond the East Peoria line.

Q. In Tazewell County, is that right?

A. In Tazewell County.

Mr. Heyl: I offer those documents that haven't been passed upon.

The Court: Have you examined them?

Mr. Knoblock: No, sir, we have not.

The Court: I think we will take a recess for about five minutes to give you an opportunity to examine them.

(Recess.)

The Court: You may cross-examine.

Mr. Heyl: I would like to reoffer those exhibits:

The Court: They are offered, as I understand. You mean the last three exhibits? The telegrams?

1134 Mr. Heyl: That's right.

The Court: I was permitting them to examine them.

Mr. Knoblock: No objection.

The Court: There is no objection? They may be admitted.

Cross-examine!

Mr. Heyl: I would like to ask the witness one question.

The Court: All right.

Q. Mr. Sprague, after sending the telegrams which you have identified, and which have been marked for identification "Plaintiff's Exhibits 29, 30 and 31," did you receive (and by "you" I mean the railroad, or any of its officers) any statement from the National Mediation Board that an emergency board procedure would be followed?

A. No, we did not.

Q. Did you receive any reply?

A. Not with reference to the appointment of an emergency board.

Q. And no emergency board or commission was ever appointed?

A. Not as far as we know.

Mr. Heyl: That's all.

*Cross-Examination by Mr. Knoblock.*

Q. What reply did you get from the emergency board or mediation board?

A. I do not have that file of telegrams with me at the present time. There have been a number of telegrams back and forth.

Q. What was the substance of the reply you received from them on December 28, 1941?

A. I don't recall the particular wire on the 28th. The substance of most of the replies from the Mediation Board was that—

Q. I am referring to the 28th now. I am not asking about the others.

The Court: Do you remember any reply you received on the 28th?

A. I don't recall a specific reply on that date, no.

Q. Could you recall receiving any telegram from the Mediation Board on December 28, 1941?

A. I could not identify it of that particular date with out the file.

Q. Do you recall receiving a telegram in reply to your telegram on December 28, 1941?

A. May I see that telegram of the 28th? (Witness examines Plaintiff's Exhibit 31.) I believe we received a reply to this telegram suggesting arbitration.

Q. And your company refused to arbitrate, is that right?

A. We have not agreed to arbitration.

Q. Well,—

A. We did refuse to arbitrate in December, as I have already testified, and we have not changed our position in that respect.

Q. In reply to this telegram that you received on December 28, 1941, which was a reply to your telegram, you received this telegram from the National Mediation Board informing you, did you not, that the Brotherhoods agreed to arbitrate this dispute, and recommended and suggested that your company arbitrate the dispute, didn't you?

A. Yes, we did.

Q. And you refused to arbitrate?

1136 Mr. Heyl: We object to that.

The Court: No, he may answer in view of the evidence that has been offered. The objection was sus-

tained yesterday, but it seems at this time you will have to show all the facts.

Answer the question.

A. We replied to the Mediation Board, stating that we had not changed our position, and that we had already stated our position on arbitration to the Board.

Q. And that was you refused to arbitrate?

Mr. Heyl: I object. He stated—

The Court: One of your exhibits states, does it not, that they refuse to arbitrate?

I think that is correct, is it not?

Mr. Elliott: Yes.

Q. And then, as I understand it, that was still your position after receiving the telegram from the National Mediation Board on December 28, 1941?

A. That was our position with reference to arbitration.

Q. And it still is?

A. As far as I know, it still is.

Q. Now, the fact of the matter is that after December 9, 1941, you had received another telegram, or at least one other notification from the National Mediation Board, that the Brotherhoods had agreed to arbitrate this dispute, other than the telegram you received on December 28, 1941, didn't you?

A. I can not say definitely as to that without examining the file. I don't have it here.

Q. Will you examine the file in that regard?

1137 The Court: Do you have the file here?

A. I believe the file is on the table.

The Court: Examine it, then.

A. (Witness complies.)

Mr. Knoblock: Around December 17 or 18 is the first one.

Mr. Heyl: What is the question. Read the question.

(Question read by reporter.)

Q. Will you tell us what date you received that other notification?

A. May I have the question read, please?

The Court: Yes, read it.

(Question reread by reporter.)

A. On December 17 we received a telegram from the Board, urging—

Q. Will you read that, please?

Mr. Heyl: Let him finish his answer, and put one question at a time.

A. On December 17 we received a telegram from the Board, urging arbitration, but that telegram made no reference to the agreement on the part of the Brotherhoods to arbitrate.

Q. Will you read the telegram?

A. (Reading.) "Mr. George P. McNear, Jr., President, Toledo, Peoria & Western Railroad

"Re cases A-903 A-904 from advice received by the National Mediation Board with respect to the labor situation existing on the Toledo, Peoria & Western Railroad involving its train, engine and yard service employees it appears that conference held at the urgent request of this Board in keeping with its telegram of Friday, December 12, has not resulted in a settlement of the issues 1138 involved. In view of this situation and because of the war emergency confronting the nation, Mediation Board must insist in the interest of maintaining maximum transportation service that you now agree to arbitrate your differences in conformity with the provisions of the Railway Labor Act. Joint McNear, Robertson and Whitney. Please answer by wire immediately."

Q. All right! Will you read the telegram that you received on December 28, 1941?

Mr. Heyl: I want to object to this as not proper cross-examination.

The Court: I think he may answer.

Q. That you received? That the T. P. & W. received?

Mr. Heyl: Was that from the Mediation Board?

A. This is a telegram from Robert F. Cole, secretary of the National Mediation Board, dated December 28, 1941.

(Reading.) "Mr. McNear, Jr. President, Toledo, Peoria & Western Railway Company, Peoria, Illinois.

"Acknowledging your telegram of even date relative to strike of Toledo, Peoria & Western Railway Company of train, engine and yard employees set for 6 P. M. today, Mediation Board has made every reasonable effort to adjust dispute under provisions of Railway Labor Act. At Board's request employees have agreed to arbitrate the controversy. This method of adjustment will provide a fair, legal and definite disposition of the matter and will avert a strike. You have it within your power therefore to prevent interruption to traffic by also agreeing to arbitration in accordance with the spirit of the Railway

Labor Act. We believe that you as an employer  
1139 should appreciate the work the Board has done and  
welcome an opportunity to arbitrate the dispute. The  
National Mediation Board has done all that in its judg-  
ment it may do under provisions of law."

Mr. Heyl: I move to strike the reading of that tele-  
gram as not binding upon the plaintiff in this case, and not  
proper cross-examination. If he wants to offer it in evi-  
dence, that is another question, but I don't believe it is  
proper, in the guise of cross-examination, to read tele-  
grams that are not referred to or discussed by the wit-  
ness in direct examination.

The Court: In view of the testimony you have offered  
showing the action that was taken all the way down to the  
Mediation Board, it seems to me it is proper cross-exam-  
ination.

Therefore, the motion will be overruled.

Mr. Heyl: The point is this, Your Honor: That the  
question of arbitration is settled by the provisions of the  
statutes, and the fact that some board urges or demands  
that we do something the statute doesn't require us to do  
is not binding upon us.

The Court: That perhaps is true.

Mr. Knoblock: It does on whether you are entitled to  
an injunction.

The Court: I am not passing on that, but I think all  
the facts should be brought out.

The motion is overruled.

Q. Isn't it a fact further, Mr. Sprague, that Mr. Gif-  
ford of your organization was one of the parties who  
1140 participated in these conferences to a great extent?

A. Yes, Mr. Gifford participated in all confer-  
ences in which I participated.

Q. Did not he say to the representatives of the Brother-  
hoods that the company, the T. P. & W., would mediate for  
ninety-nine years but never arbitrate?

Mr. Heyl: We object to that as improper.

The Court: Yes, objection sustained to what he said.

Q. Did he make that statement when he was acting in  
behalf of the T. P. & W.?

Mr. Heyl: I object to that.

The Court: Objection sustained. I don't see how that  
makes any difference. I have permitted you to show,  
which I think you have a right to, in view of testimony,  
that the company refused to arbitrate. It stands just



there. I don't think any further evidence will do anybody any good.

Q. After the men went out on strike on the evening of December 28, 1941, your company also received some telegrams from Joseph Eastman, Federal Coordinator of Transportation, didn't you?

Mr. Heyl: I object to that as not cross-examination.

The Court: Objection sustained.

Mr. Knoblock: That's all.

The Court: Call the next witness.

Mr. Heyl: I think that's all.

The Court: Any other testimony on the part of the plaintiff?

Mr. Elliott: Just a moment, Your Honor.

1141 Mr. Heyl: That is the plaintiff's case on this motion.

The Court: The plaintiff rests?

Mr. Heyl: Yes.

There is just one matter of pleading we discovered in checking our complaint. There was no allegation in the complaint that we requested the Mediation Board to proceed under the Railway Labor Act to ask for an emergency board and, while that's all been covered by the testimony, there was no allegation, so we ask leave at this time to amend the complaint by inserting an allegation covering that subject, and the amendment has been prepared, sworn to and is presented.

The Court: Have you read the amendment?

Mr. Knoblock: No, I haven't seen it.

The Court: Present it to counsel. I take it there will be no objection.

Mr. Elliott: It merely conforms to the evidence.

Mr. Knoblock: We object to it at this time as coming too late.

The Court: Does it conform to the evidence that we have already heard?

Mr. Knoblock: I think it does conform to the telegrams that have been introduced here this morning.

The Court: You were anxious yourself to get that before the court, so I don't see why you want to object. The objection is overruled. It may be admitted.

Mr. Heyl: Leave granted to amend?

The Court: Leave granted.

1142 Mr. Heyl: We haven't prepared an order permitting the amendment.

The Court: You can show it on the card.

Mr. Elliott: Paragraph 22½, I think it is.

Mr. Heyl: We will—

The Court: I will hear you on your motion, Mr. Knoblock.

(By direction, argument on defendants' motion not transcribed.)

The above and foregoing was all the evidence offered in chief on the trial of said case on behalf of the Plaintiff.

1143 . Thereupon, the Defendants, to maintain the issues in their behalf, offered the following evidence, viz:

HERMAN H. SIEBENTHAL, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Knoblock.*

Q. State your name.

A. Herman H. Siebenthal.

Q. And are you one of the defendants in this case?

A. Yes, sir.

Q. Have you— Were you present in the court room and heard the testimony of Larry Ward, one of the witnesses for the plaintiff?

A. Yes, sir.

Q. Drawing your attention to the date of December 31, 1941, when plaintiff's train named extra 43 west left the T. P. & W. yards at approximately 7:30 A. M. proceeding to Hamilton, Illinois, on which train was the witness, Larry Ward, the engineer, I will ask you if you at that time stoned this train, or threw any objects of any kind or character at it as it was going under the viaduct?

A. I did not, sir.

Q. Is that the only time that you have been mentioned by any of the witnesses in this case?

A. Yes, sir.

Mr. Heyl: I object to that.

The Court: He may answer that.

1144 Mr. Knoblock: You may cross-examine.

*Cross-Examination by Mr. Heyl.*

Q. Where were you at that time?

A. Out on the picket line.

Q. You were there when the stones were thrown?

A. No.

Q. Where were you?

Mr. Knoblock: I object; asked and answered.

The Court: He may answer.

A. On the picket line.

Q. Where was the picket line?

A. About thirty feet from the railroad.

Q. Is that where the stones were thrown?

A. I didn't see no stones thrown.

Q. Did you see any men around there?

Mr. Knoblock: I object to this.

Mr. Heyl: Cross-examination.

The Court: He may answer; cross-examination.

A. Yes, Christoff was there.

Q. And you heard the testimony that Christoff was one of the men that threw stones in this case?

Mr. Knoblock: I object.

The Court: Yes, sustained.

Q. How long were you there that day?

A. Oh, I couldn't say that now.

Q. Who else was there?

Mr. Knoblock: I object as immaterial.

1145 The Court: No, he may answer.

A. Christoff and I; that is all the men I know of.

Q. Did you see any other men around there?

A. No.

Q. Where was the picket line?

Mr. Knoblock: I object; asked and answered.

Q. You said it was thirty feet from the railroad, but where was it located?

A. On Washington Street—I can't say what number it is—East Washington Street.

Q. Down near the Lake Erie junction?

A. Yes, sir.

Q. What date was that?

A. December 31.

Q. What?

A. December 31.

Q. December 31?

A. Yes, sir.

Q. What time of the day?

A. Oh, I couldn't say just what time it was. I was there all day.

Q. You stayed there all day, did you?

A. Yes, sir.

Q. Mr. Christoff was there with you at that time, and he threw a stone at the train, did he not?

Mr. Knoblock: I object.

The Court: He may answer if he knows.

A. I don't know. I didn't see him throw any stones.

Q. Did he have any stones with him?

1146 Mr. Knoblock: I object.

The Court: He may answer.

A. I didn't see any.

Q. He shook his fist at the engineer as the train passed?

Mr. Knoblock: I object to that as immaterial.

The Court: Objection sustained as to that.

Mr. Heyl: I think that's all.

Mr. Knoblock: That's all.

VERD KIRK, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Knoblock.*

Q. State your name.

A. Verd Kirk.

Q. Are you one of the defendants in this case?

A. Yes, sir.

Q. I will ask you if you were present in the court room when a witness for the plaintiff testified that he had a conversation with you in Couri's grocery store?

A. I was.

Q. What was that witness's name?

A. Grafelman, I think it was.

Q. Grafelman? William A. Grafelman?

A. Grafelman, yes.

Q. I will ask you to state what that conversation was.

1147 A. I met the man in front of Couri's store, and I told him I had heard of a conversation that his wife had put out over the telephone, and I told him if she

didn't discontinue it that she would look the same to us as he did.

Q. Did you at that time say this, or this in substance: That if she did not stop that, somebody would get her?

A. I did not.

Q. Did you at that time make any threat of any kind or character—

A. I did not.

Q. —toward either Mr. Grafelman or his wife?

A. I did not.

Q. Do you recall the conversation on the engine with a witness for the plaintiff by the name of Mr. Hunter?

A. I did.

Q. What is his name?

A. Hunter. That's all I know.

Q. Would it refresh your memory if I mentioned the name William J. Hunter? Is that the man?

A. That's the man.

Q. Will you state that conversation?

A. I don't know as I could state it all, but it was in regards to this strike question. If I remember right, the T. P. & W. had a meeting over there that evening, and he hung around until the officials had left the premises so he could get on the engine and talk to us.

Q. What was said?

Mr. Heyl: I want to object to the purpose; which is a conclusion of this witness, that he wanted to get on; purely a conclusion.

1148 Q. He got on the engine, is that right?

A. He did get on the engine.

Q. What was said by you and by him?

A. There was nothing said only in regard to this strike.

Q. What was said?

A. I don't know as I could recall word for word what was said,—

Q. State the substance.

A. —but I think there was a remark to him that there might be trouble if there was a strike.

Q. Did you at that time say this, or this in substance: That if there was a strike called there wouldn't be any engines on the T. P. & W. get as far west as the Illinois River?

A. I did not.

Q. Or east of Washington Street?

A. I did not.

Q. Did anything else occur there that evening in the engine cab?

A. He asked me for a copy of the contract. He said he never had been given the privilege by the officers of the T. P. & W. to see it.

Mr. Heyl: I move to strike that as immaterial, and not tending to prove any issue, and not binding on us.

Mr. Knoblock: Part of the conversation.

The Court: I think he may answer.

Q. What contract do you refer to?

Mr. Heyl: I object to that as immaterial and not proper in this case, and not tending to prove any issue, and not binding on us.

The Court: If I remember the testimony, there was 1149 the testimony of William Hunter in regard to certain threats he made, and that witness stated in the conversation the threats the man made were that there wouldn't be any train over the bridge. I think he can give the conversation and, for that reason, the objection will be overruled.

(Question read by reporter.)

A. The contract that the T. P. & W. put into effect on the 29th.

Mr. Heyl: I move to exclude that answer as a conclusion of the witness as to what contract it was because there was no contract in force on that date, and I object to it for that reason.

The Court: I think the objection will be sustained.

Let him state what was said.

Mr. Heyl: I move to strike the answer.

Q. Then on another occasion were you mentioned as having a club in your hand at the freight house?

A. No, sir.

Q. Were you mentioned in this testimony at any time as having a club in your hand?

A. At the lane at the entrance to the T. P. & W. property on Route 24.

Q. Do you recall who testified to that?

A. What?

Q. Do you recall who testified you had a club in your hand?

A. The name?

Q. The name of the man that said you had.

A. That was the electrician, Hulsebus.

Q. Hultgren?



1150 A. Hultgren, or some such a name.

Q. Was that the day Mr. Hultgren referred to? December 30, 1941, at approximately 3:30 P. M.?

A. Yes, sir.

Q. And that was at the west end of the lane, is that true? Were you at the west end of the lane?

A. North end of the lane.

Q. North end of the lane near the hard road?

A. Near the hard road.

Q. Did you have a club in your hand?

A. Yes.

Q. What did you do?

A. Driving a hatchet into a block of wood trying to split the block.

Q. What were you going to do with the block?

A. Put it on the fire.

Q. For what purpose?

A. To keep warm.

Q. Did you use that club at that time in any way to threaten or menace Mr. Hultgren?

A. I did not.

Q. Did you at that time do anything to threaten or menace Mr. Hultgren?

A. I did not.

Mr. Knoblock: You may cross-examine.

*Cross-Examination by Mr. Heyl.*

Q. Where was this last incident that you say Hultgren was present? Where was that?

A. At the entrance to the lane to the T. P. & W. property.

1151 Q. What date was that?

A. I don't remember what date it was.

Q. And were you there that day all day?

A. I don't remember whether I was there all day or not.

Q. Did you have any conversation with Hultgren at that time?

A. I joked with everybody that went in and out the lane.

Q. I am asking you if you had any conversation with Hultgren.

A. Yes.

Q. I didn't ask about jokes. Did you have any conversation with him?

A. Yes, sir.

Q. What did you say to him?

A. I don't know what I said to him. We just joked about everything that was going on.

Q. Did you say anything to him about upsetting the car he had?

A. I did not.

Q. Now, on the engine with Hunter, you say you had some conversation, and you said that something was said if the strike occurred there would be trouble. Is that what you said?

A. I said there might be trouble.

Q. What did you mean by that?

A. What is trouble?

Q. I am asking you what you meant by it. You said it. Can you tell us what you meant by it?

A. I just said there might be trouble.

Q. What kind of trouble?

A. There are lots of kinds of trouble.

Q. Why were you talking to him about trouble in the event of a strike?

1152 A. He was asking me about it.

Q. He asked you, didn't he?

A. He was explaining the situation to me, and I said there might be trouble.

Q. And someone said that the engines or trains might be stopped, didn't they?

A. If they did, I didn't hear it.

Q. Were you ever present when any of them was stopped?

Mr. Knoblock: I object. Limit it to the specific times I have directed my direct examination to. We will go into this whole matter then. We will never get through.

The Court: I think the objection will be sustained.

Q. Look at this photograph, Plaintiff's Exhibit 1, and state if you are in that group there any place.

Mr. Knoblock: I object. I did not ask him about it.

The Court: No, I think he may answer that.

A. No, I am not.

Q. Is that the place where you talked with Hultgren?

A. It is not.

Q. Isn't that the lane that leads to the freight house?

A. I know nothing about the lane to the freight house at all.

Q. Do you recognize the place in that photograph?

A. No, sir, I have never been there.

Q. You haven't any idea where that is, is that it?

A. No, sir.

Q. You don't recognize anything about there?

A. No, sir.

Q. Do you know any of the people on that photograph?

1153 Mr. Knoblock: I object as not proper cross-examination.

The Court: Objection sustained.

Q. Where was it you had this conversation with Hultgren?

A. I told you at the entrance to the T. P. & W. property at Route 24, the north end of the lane.

Q. The north end of the lane leading to the property?

A. Leading to the property.

Q. Who else was there at that time?

A. I do not know.

Q. Can you name another person that was there?

Mr. Knoblock: I object; asked and answered.

A. Mr. Hulsebus.

The Court: He answered.

Mr. Knoblock: You mean Hultgren?

A. The electrician.

Q. Anyone else there?

A. I do not know.

Q. Any of you men there?

A. I don't know.

Q. You have no recollection?

A. I have no recollection of anybody being there.

Q. What were you doing if anybody else was there?

A. I don't know.

Mr. Knoblock: I object.

The Court: He has answered.

Q. All you can remember is what you told the court?

A. I can't remember who was there.

Q. How long were you there that day?

A. I don't know.

1154 Q. Have you been there more than one day?

A. I have been there several days.

Q. What were you doing there?

A. Picketing.

Q. What did you do when you picketed?

A. Hung around the fire to keep warm.

Q. Did you ever stop any automobiles?

A. I did not.

Q. Did you ever see an automobile stopped?

A. I have seen them stopped, yes, by the state sign.

Q. What's that?

A. By the state sign.

Q. I am asking you if any of them were stopped after they got in the lane.

A. Not that I recall of.

Q. Did you ever see an automobile stopped coming out of the lane?

A. I have seen them stopped for the sign.

Q. I am not talking about the sign, stopped by any of your men.

A. No, sir, I didn't.

Q. Were you there every day the strike was on?

A. I was not.

Q. How many days were you there?

Mr. Knoblock: I object.

The Court: He may answer. He is a defendant.

Q. How many days were you there?

A. I do not recall how many days I have been there.

Q. How many men have been there with you each time?

A. There have been different amounts.

Q. How many were there the day you had this transaction with Hultgren?

A. I do not know.

1155 Q. You are the only one you can remember representing the strikers?

A. That's all I can remember.

Q. What time of the day was that?

A. I am not sure; possibly around 3 o'clock, somewhere in there.

Q. Was anyone with Hultgren at that time?

A. I don't remember whether there was or not.

Q. Did you have any conversation with him?

A. Joked with him, laughed with him.

Q. Did you have any conversation with him?

Mr. Knoblock: I submit that's an answer.

The Court: He may answer.

Q. Did you say anything to him?

A. Why, nothing outside of only just joking and cutting up with him the same, same as I did with all of them.

Q. Was there someone with him?

A. I don't know whether there was or not.

Q. You don't remember very much about it?

A. No, sir.

Q. Except that you had a hatchet? Do you?

Mr. Knoblock: I object.

Mr. Heyl: I understood him to say he was driving a hatchet into a block.

Q. Is that what you said?

A. Yes, sir.

Q. That was your answer on direct examination?

A. That was my answer about what I was doing with the table leg.

Q. At that particular time?

A. At that particular time?

Q. What became of the table leg?

1156 A. I don't know.

Q. Did you ever see anybody use it there in that lane?

Mr. Knoblock: I object to that.

The Court: Objection sustained to that.

Q. Did you ever use it?

A. Driving that hatchet in the block.

Q. That is the only time you ever used that table leg?

A. As far as I can recall.

Q. How did it happen to be there?

A. I do not know who brought it there.

Q. What else was there in the way of clubs or table legs?

A. I don't know. That is the only one I ever saw.

Q. Did you ever see any there?

A. I saw that table leg.

Q. Did you see any other table leg?

A. I couldn't recall whether I did or didn't.

Q. Did you see any clubs in the hands of anybody?

A. Lots of clubs. I hauled them to make fires with.

Q. You saw clubs there?

A. I said I hauled a lot of them there.

Q. Did you see them there every day until this restraining order was entered?

A. Most of them was burned up.

Q. There was some there?

A. Saturday when I left they was all burned up.

Q. The last time you were there before Saturday, when was that?

A. Sir?

Q. The last time you were there before Saturday, when was that?

A. I couldn't say just when that was.

1157 Q. You did have a talk with Grafelman at the grocery store, didn't you?

A. Nothing, only the conversation which I stated.

Q. And that was you had heard a conversation with reference to something his wife had said over the telephone?

A. I was told a conversation.

Q. And you thought it was your business to tell him that if his wife didn't discontinue that, that you would have the same opinion of her that you had of him? Is that what you said?

A. That's what I said.

Q. What was that opinion?

Mr. Knoblock: I object. That doesn't prove or disprove any—

Mr. Heyl: Cross-examination.

The Court: I think the objection will be sustained.

Q. Did you tell him what you meant by that statement?

A. I did not.

Q. Did you go in the store after he got there?

A. I did not.

Q. Where did you see him?

A. Standing out on the street.

Q. And you went up to him and started to talk to him, didn't you?

A. Yes, sir.

Q. He hadn't said anything to you, had he?

A. No, sir.

Q. Who else was on the engine with you when you talked to Hunter?

A. Fireman Engelhart.

Q. Is he one of the defendants in this case?

A. Yes, sir.

1158 Q. Who started that conversation?

A. Hunter.

Q. What did he say to you?

Mr. Knoblock: I object; all gone over.

The Court: I don't think it has in cross-examination. He may answer.

A. What was the question?

Q. What did Hunter say to you?

A. Why, I couldn't just state just exactly word for word. The conversation was in regard to the strike.



Q. What did Hunter say to you first to bring up the subject?

A. I couldn't tell you that.

Q. Haven't you any recollection of it at all?

A. No, sir.

Q. What did you say then? What did you say in response to whatever he said?

A. What do you mean?

Q. I mean what did you say to Hunter after he said something to you?

A. Well, I said a dozen different words to Hunter in regard to the strike while he was on the engine.

Q. I am asking you about the statement with reference to a strike. What did you say to him?

A. I said there might be trouble.

Q. Is that all you said about it?

A. That's as far as I can recall what was said.

Q. You didn't elaborate the trouble any at all, then?

A. No, sir.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

1159 H. O. TODD, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Knoblock.*

Q. State your name.

A. H. O. Todd.

Q. And are you one of the defendants in this case?

A. Yes, sir.

Q. Drawing your attention to the evening of December 30, 1941, between the hours of 5:30 P. M. and 6 o'clock, or shortly thereafter, I will ask you where you were.

A. I was just about the cemetery entrance out on East Washington Street in East Peoria.

Q. What were you doing there that evening?

A. I just drove up there and stopped in my car.

Q. And who was there on that occasion when you arrived there?

A. At that present time I was the only one there.

Q. Did others come up later?

A. Yes, sir.

Q. Who were they?

A. Well, as I recall it, I believe Mr. McMullen came to me.

Q. Was W. L. Brown there?

A. I didn't see him.

Q. Was Mr. Causey there?

A. I never saw him.

Q. Was Mr. Roskamp there?

A. No, sir.

Q. Was Jerry Underwood there?

A. I didn't see him.

1160 Q. Now, do you recall the occasion when Herschel Thompson drove his car—Who is Herschel Thompson? Do you know?

A. It's my understanding he is a special agent for the company.

Q. And he was on that date?

A. Yes, sir.

Q. Do you know Zeno F. Merrill?

A. I do.

Q. Do you recall the occasion on that date, approximately the time I have mentioned, between 5:30 and 6 o'clock, when Herschel Thompson drove his automobile northerly out of the lane onto hard road 24?

A. Yes, sir.

Q. Which way did Mr. Thompson turn?

A. He started to turn west.

Q. What happened?

A. He had a collision with a truck going east on Route 24.

Q. What occurred after that?

A. He stopped his car, well, very shortly after the collision happened. He stopped his car at the edge of the pavement.

Q. On which side of the road?

A. The north side of the road.

Q. Go ahead.

A. To clear the highway of the truck, he drove his car up almost to the entrance of the cemetery and stopped and went back.

Q. You mean Herschel Thompson?

A. Yes, sir.

Q. How far was he from the truck at that time?

A. His car—At that time the truck was standing right at the back of his car.

1161 Q. How far were they apart after they were both off the pavement?

A. Possibly fifty feet.

Q. What did Herschel Thompson do there that you observed, if anything?

A. He got out of the car and walked back toward the truck.

Q. What else happened, if anything?

A. At that time is when Mr. Merrill was discovered sitting in the car.

Q. Who discovered that?

A. Mr. McMullen and I.

Q. How did you do it?

A. With the aid of a light Mr. McMullen had.

Q. Go ahead.

A. We saw him crouching in the back seat of the car.

Q. Go ahead.

A. And the door, as I recall, the left door of the car, was smashed in. The imprints of the bumper was yet in the door.

Q. Who opened the door?

A. Mr. McMullen, as I recall.

Q. What happened?

A. When Mr. McMullen opened the door, Mr. Merrill came dashing out of the car between us with his fists raised, fighting, toward Mr. Kohtz, Walter Kohtz.

Q. Did you or Mr. McMullen or anyone at that time order him out of the car?

A. We did not.

Q. After he came out of the car, what did he do as far as Walter Kohtz is concerned?

A. As I recall, he struck him.

1162 Q. Did Walter Kohtz strike him?

A. I can not say.

Q. What then?

A. A scuffle went across the highway.

Q. Do you know who he had the scuffle with on the other side of the highway?

A. I do not, as I remained on the north side of the highway.

Q. On that occasion there that evening, who struck the first blow?

A. Mr. Merrill, to my knowledge.

Q. And you saw that?

A. I saw him come out of the car with his hands raised.

Q. Did you see him strike at Kohtz?

A. No, I saw him rush toward Kohtz. I didn't see the blow struck.

Q. Is that all you know of that incident?

A. That is all.

Q. Did you hear—Have you heard any testimony where you have been named at any other place throughout this proceeding?

A. Yes, sir.

Q. Where?

A. Was named as being at West Washington Street crossing at the switch engine incident.

Q. Were you there?

A. I drove by there.

Q. Was anything going on when you drove by?

A. There was nobody there when we went by.

Q. Did you throw any rocks or stones or make any threats of violence of any kind or character there?

A. I did not.

Q. Are those the only two places you have been 1163 mentioned in this case?

A. Yes, sir.

Q. Did you, on either one of those occasions, make any threats of violence or commit any violence of any kind or character?

A. No, sir.

Q. Did you, on either one of those occasions, either strike him, threaten anyone or throw anything of any kind or character toward anyone?

A. I did not.

Mr. Knoblock: You may cross-examine.

*Cross-Examination by Mr. Heyl.*

Q. What time did you get out to the cemetery entrance that evening?

A. I don't recall the exact time. It was in the evening. It was after dusk.

Q. It was before Thompson and Merrill got there?

A. Just before, yes, sir.

Q. Did anyone go out there with you?

A. No, sir.

Q. Where did you park your car?

A. Right at the entrance of the cemetery.

Q. How long had you been there when they came out?

A. I had just gotten out of the way.

Q. You intended to stay there sometime?

A. No, I was going up there and turn around and come back.

Q. What was your purpose in going there? To be there when Merrill came out of the lane?

A. I had no intention of being there when Merrill came out.

Q. Where had you started that evening?

1164 A. At the viaduct.

Q. What were you doing at the viaduct?

A. Picket duty.

Q. You were on picket duty at the viaduct, and you came back to Route 24?

A. Yes, sir.

Q. And then came up to this lane?

A. Yes.

Q. And stopped there, and where were you going when you got out of the car?

A. Over to the fire where the boys were.

Q. Where did you find McMullen?

A. He was standing there by the fire.

Q. And you got him at the fire, and come back to your car?

A. No, I called him.

Q. Did you go to the fire before you saw Merrill?

A. I did not.

Q. Merrill and Thompson happened to come out of that lane?

A. Yes, sir.

Q. And they had the accident?

A. Yes.

Q. And Merrill's car was taken down near the cemetery entrance?

A. Thompson's car was.

Q. And you and McMullen went looking in that car with the use of a light?

A. Yes, sir.

Q. What purpose had you looking in that car?

Mr. Knoblock: I object.

The Court: He may answer.

1165 A. We saw somebody crouching in the car, and looked in to see who it was.

Q. Did you look in any other cars that evening?

A. I did not.

- Q. What business did you have opening the door?  
A. I did not.  
Q. Who did?  
A. McMullen, as I recall.  
Q. You were standing right by him?  
Mr. Knoblock: I object.  
The Court: He may answer.  
A. I was standing there.  
Q. Did you strike Merrill any?  
A. No.  
Q. Did you beat Merrill after he got out of the car?  
A. No.  
Q. Did you see anybody beat him?  
A. No.  
Q. Anybody strike him at all?  
A. No.  
Q. He was not struck that evening?  
A. I didn't say that. I never saw anybody strike him.  
Q. Did you say he was struck?  
A. I never saw him.  
Q. And was he bleeding at the nose?  
A. I did not.  
Q. Did you see that?  
A. I did not.  
Q. Did you get in your car and leave?  
1166 A. I stayed on that side of the highway.  
Q. They took him across the highway?  
A. I couldn't say that.  
Q. How many took him across?  
A. I couldn't say.  
Q. In your best judgment?  
A. Two.  
Q. He was able to walk?  
A. I don't know.  
Q. How did they take him across the highway?  
A. I don't know.  
Q. Did they have hold of him?  
A. No, sir.  
Q. Did they have hold of him?  
A. I couldn't say.  
Q. Didn't they push him into the gutter?  
A. I don't know. It was dark at that point.  
Q. It was dark at that point, and you couldn't see what happened?  
A. I did not see what happened.



Q. Did you hear what happened?

A. I heard part of the conversation, yes.

Q. What did you hear?

A. I just heard them say, "Merrill is here."

Q. They were talking to him in kind of a Sunday School talk?

Mr. Knoblock: I object.

The Court: Sustained.

Q. They were cursing him?

A. Not to my knowledge.

Q. Did you hear any cursing?

1167 A. I did not.

Q. Did you see them push him?

A. I couldn't say.

Q. How many were down in the gutter?

A. I don't know.

Q. Did you see any?

A. I saw two, as I stated.

Q. Who where they?

A. One was Mr. Kohtz. The other I don't recall.

Q. What became of McMullen?

A. I don't know.

Q. He wasn't with you?

A. No.

Q. He didn't run away?

A. I don't know.

Q. Did he leave before you did?

A. I don't know.

Q. How many men did you see at that car?

Mr. Knoblock: I object; asked and answered.

The Court: No, he may answer.

A. McMullen and Kohtz and I were standing at the left side of the car.

Q. You knew that Thompson was an employee of the company, didn't you, before you tried to look into the car with this light?

A. Why, yes.

Q. You knew Merrill was in the car?

A. I did not.

Q. What were you looking for in there?

A. We was looking to see who it was.

1168 Q. What business was it of yours?

Mr. Knoblock: I object; asked and answered.

A. Wanted to see who it was crouching in the car.

Q. How did you know he was crouching if it was dark?

A. You could see a shadow in that car.

Q. After you found out who it was, you opened the door?

A. I did not open the door.

Q. McMullen?

A. I believe he did.

Q. You stayed right there by the car?

A. Yes.

Q. What did you say to Merrill?

A. Not a word.

Q. Did you ask Merrill to get out?

A. I did not.

Q. What business had you to open the door?

A. I didn't.

Q. What purpose? Why did you open the door?

Mr. Knoblock: Objection.

The Court: Sustained.

Q. Did you see anybody go around there?

A. No.

Q. How many men altogether did you see come from the picket line up to the place where Merrill was being beaten?

Mr. Knoblock: I object; asked and answered.

He said three men.

The Court: I think he said three men.

Q. What is the total you saw with Merrill on the premises, either in the road or in the gutter?

1169 A. Two and myself.

Q. Two and yourself?

A. Yes.

Q. If Merrill did get a beating, he received it from you and McMullen and Kohtz?

Mr. Knoblock: I object.

The Court: Sustained.

Q. Was W. E. Causey there?

A. I didn't see him.

Q. Would you say he wasn't there?

A. I didn't see him there.

Q. I am asking if you will say he wasn't there?

A. I don't know whether he was there or not.

Mr. Knoblock: I object.

The Court: Objection sustained.

Q. Was he down at the entrance to the lane?

A. I did not see him.

Q. How many were at the entrance of the lane that didn't leave there?

A. I couldn't tell you.

Q. Did you see how many were there?

A. I didn't.

Q. What were you doing there?

A. To see the boys was all.

Q. You went down to the fire?

A. I did not.

Q. You said you went down and got McMullen.

A. I said I called.

Q. You didn't go down?

1170 A. No.

Q. Could you see the boys there?

A. There was a reflection of the fire.

Q. There was a light there?

A. Nothing there but the salamander.

Q. Are you sure there was no light there at that time?

A. Yes, sir.

Q. Was W. F. Köhrtz there? I want to be sure I have the right man.

A. I believe it was.

Q. And Walter McMullen?

A. Yes, sir.

Q. And yourself?

A. Yes, sir.

Q. Was there anything happened after that, after you got through with Merrill?

A. After what?

Q. After you fellows got through with Merrill.

A. I had nothing to do with Merrill.

Q. Did you see him get back in a car?

A. I did not.

Q. Did you stay there?

A. I did.

Q. Where were you all the time?

A. I went to my car.

Q. How far was your car from the Thompson car?

A. Probably ten or twelve feet.

Q. You went back to your car?

A. I did.

Q. How far was that from the end of the lane?

1171 A. That is probably a hundred feet, maybe farther, to the—

Q. Your car was parked in a westerly direction, or easterly?

A. It was headed toward the cemetery at the west side of the entrance.

Q. And it was parked on the left side?

A. Yes.

Q. The Thompson car was parked on the same side?

A. No, sir.

Q. Where was the Thompson car?

A. It was headed westerly just east of the entrance.

Q. He was on the same side of the street, wasn't he?

A. Yes.

Q. And there was ten feet between the two cars?

A. At least that far.

Q. What?

A. At least that far, yes.

Q. Did you see Mr. Merrill at any time enter that car again?

A. I did not.

Q. At no time?

A. No.

Mr. Knoblock: I object; asked and answered.

Q. Did you see him come back over the bank after they had pushed him down in the sewer?

A. I did not.

Q. The last you saw was when he went in the sewer, and it was too dark?

A. The last I saw was when they were crossing the highway.

Q. You saw him down in the sewer?

A. I did not.

1172 Q. You heard them there, didn't you?

A. I did not.

Q. How did you happen to be over there that day that the train was at this crossing?

A. As I recall, I believe I am named as being with Mr. Totten, Leo C. Totten, at that time. We went up to the office to get our checks and we got our checks, and came out of the office and drove across the bridge and by there.

Q. You knew the train was going to be stopped?

A. I did not.

Q. You heard that discussed in the meeting the night before?

A. I did not.

Q. Did you stop?

- A. We did.
- Q. Did you hear the discussion the evening before?
- Mr. Knoblock: I object.
- The Court: He may answer.
- Q. Were you at the meeting? That is my question.
- A. I was at the meeting.
- Q. At that meeting they arranged to stop the train?
- A. They did not.
- Q. Did they discuss it?
- A. They did not.
- Q. Did they discuss every night what was to happen next day?
- A. I imagine there was—
- Q. Every man was assigned his job?
- A. Just as pickets.
- Q. Just as pickets, and that is all?
- A. Yes.
- 1173 Q. You did nothing in connection with this strike except act as a picket?
- A. That is all.
- Q. How did you happen to be there at the time this train was stopped at Washington Street?
- Mr. Knoblock: I object; asked and answered.
- The Court: He answered.
- Q. Who was there?
- A. Totten.
- Q. Did you see Wilson there?
- A. I believe Wilson was with us.
- Q. Was he getting his check, too?
- A. He came out of the office, too.
- Q. Did he get his check?
- A. I couldn't say.
- Q. You saw Newdigate there?
- A. I did not.
- Q. Did you see Kneisley there?
- A. I did not.
- Q. Were you all trying to get your checks or not that day?
- A. I don't know; just us three at that time.
- Q. Did you see Lucas there that day?
- A. I did not.
- Q. Did you see Mr. Mack there that day?
- A. I did not.
- Q. You didn't see any of these men?
- A. I did not.

Q. Did you stop your car?

A. I wasn't driving my car.

1174 Q. Did the other man stop?

A. Yes.

Q. Who was the other man driving?

A. Mr. Totten.

Q. Where did he stop his car?

A. At the right hand side of the road going east just about at the engine.

Q. Where?

A. About at the engine.

Q. How long were you there?

A. About five minutes.

Q. What did you stop for?

A. Stopped and looked at the engine.

Q. You had never seen an engine before?

Mr. Knoblock: I object to that.

The Court: Objection sustained.

Q. What were you looking at the engine for?

A. The damage done to it.

Q. Do you know who did it?

A. We did not.

Q. What damage did you see?

A. Cab windows broke out.

Q. You never threw any stones?

A. No.

Q. Did you see any members of the crew?

A. No.

Q. They were all gone?

A. As far as I know.

Q. Did you see them running, and some of your  
1175 men running after them?

A. I did not.

Q. What did you stop there for?

Mr. Knoblock: I object; answered.

The Court: He said to look at the engine.

Q. You went off the pavement and parked your car?

A. We just stopped.

Q. Did you go off the pavement?

A. I don't know whether he was off the pavement or not.

Q. Did you get out of the car?

A. No.

Q. Did any of them get out of the car?

A. No.



Q. How long did you stay there?

A. Five minutes.

Q. Before the train left?

A. We were there five minutes.

Q. And then where did you go?

A. On to East Peoria.

Q. Back to East Peoria?

A. Not back to East Peoria; on to East Peoria.

Q. You were coming from East Peoria at the time?

A. No, sir.

Q. Where were you coming from?

A. I answered that.

Mr. Knoblock: I object; asked and answered.

The Court: He has answered.

Q. You were in the office at the Union Station?

A. Yes.

Mr. Knoblock: I object; asked and answered.

1176 The Court: He has answered.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

CLARENCE S. GABBERT, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Knoblock.*

Q. State your name, will you?

A. Clarence S. Gabbert.

Q. Are you one of the defendants in this case?

A. Yes, sir.

Q. Were you present in court when Larry Ward testified, one of the witnesses for the plaintiff?

A. Yes, sir.

Q. Drawing your attention to the statement of Mr. Ward having reference to either at Franklin Street bridge or the first street on the other side of Cedar Street on the day of December 31, 1941, while Larry Ward was the engineer on T. P. & W. train extra 43 west, I will ask you if you, on that occasion—if you were present on that occasion.

A. No.

Q. Did you throw any rocks or stones or any other objects on that day at any time, and break the headlight on this train that Mr. Ward was the engineer upon?

A. I did not.

Q. Now, directing your attention to the statement  
1177 Mr. Ward made of the occurrence at Wheeler's crossing, in which he stated that you were present and threw some objects or rocks at the engine at that time, I will ask you if you were present?

A. No.

Q. Were you ever in the vicinity of Wheeler's crossing on that date?

A. No.

Q. At all those two places that I have mentioned, were you or were you not present on those occasions?

A. I wasn't present on either occasion.

Mr. Knoblock: You may cross-examine.

*Cross-Examination by Mr. Heyl.*

Q. What is the first date that you are talking about?

A. This was on the 31st.

Q. Where?

A. At Persimmon Street that I was accused of.

Q. Were you down in that neighborhood?

A. I was not.

Q. Where were you that day?

A. I was at home.

Q. All day?

A. Not all day.

Q. What time was it that they accused you of knocking the headlight out of the engine?

A. I don't know directly what time, but Mr. Ward stated that he left the yard at 7:30.

Q. And you say you are not the C. S. Gabbert who hit the headlight with a stone and broke the light?

A. I didn't break the light.

1178 Q. I am asking you if you threw a stone at the engine.

A. I did not.

Q. At no time?

A. At no time.

Mr. Knoblock: Limit it to this occasion.

The Court: He may answer. He is a defendant.

Q. Did you ever throw a stone at any of these locomotives?

A. I did not.

Q. You are sure of that, are you?

A. I am positive.

Q. Were you down near the American Milling Company on January 2?

Mr. Knoblock: I object. I didn't go into that.

The Court: He may answer. He is a defendant.

A. No, sir.

Q. You were not down there at all?

A. No, sir, I was not.

Mr. Knoblock: The plaintiff has accused these men of different actions, certain actions on certain occasions, and we are putting these men together into this specific occasion alone. If they are going into their conduct during this entire strike, we will never get through.

Mr. Heyl: We can ask the defendant anything in regard to the case.

The Court: Let the record show an objection is made to the question, and the objection is overruled.

Q. Were you at any place near the train on December 31, 1941, after it left the yards at East Peoria and before it reached Canton 12:08 P. M. that day?

1179 A. On the 31st?

Q. Yes, sir.

A. No, sir.

Q. Were you near it at any time?

A. No, sir.

Q. Were you near the train on January 2, 1942?

Mr. Knoblock: I object as not proper cross-examination. I never asked him anything about January 2.

The Court: He may answer. The objection is overruled.

A. No, sir.

Q. At any time after it left the yards in East Peoria until it arrived at Canton?

Mr. Knoblock: I object; not proper cross-examination.

The Court: Objection overruled. He may answer.

A. No, sir.

Q. Were you ever near any of these trains at any time during this strike?

Mr. Knoblock: I object; not proper cross-examination.

The Court: The objection will be sustained whether he was near the train.

Q. On any of the instances testified to in this case, were you near any of them?

Mr. Knoblock: I object; not specific enough.

The Court: Objection sustained.

Q. You know John Gimming, do you not?

Mr. Knoblock: I object; not proper cross-examination.

The Court: He may answer.

A. Yes, sir.

1180 Q. Was he with you on December 31?

A. He wasn't at home with me.

Q. I am asking if he was with you any time that day.

A. No, sir.

Q. What is your answer?

A. I don't know.

Q. Well, don't you know where you were that day?

A. Yes, sir.

Q. Where were you?

A. At home.

Q. All day?

A. Not all day.

Q. Where were you when you weren't home?

A. I was up at the meeting.

Q. What meeting?

A. Jefferson Hotel.

Q. What meeting was that?

A. That was the meeting of all striking employees.

Q. And that was held at what time of day?

Mr. Knoblock: I object as not proper cross-examination.

The Court: He may answer.

A. 11 o'clock.

Q. In the morning?

A. Yes, sir.

Q. How long were you there?

Mr. Knoblock: I object; not proper cross-examination and immaterial.

The Court: He may answer.

1181 A. I was there probably until 2 o'clock.

Q. Then where did you go?

Mr. Knoblock: I object.

The Court: He may answer.

A. The 31st? I went down and got my check.

Q. Where?

A. Union Station.

Q. Go in a car?

A. Mickey McGuire took me.

Q. Then where did you go?

A. Out to his home.

Mr. Knoblock: I object; not proper cross-examination.

The Court: He answered. The objection is overruled.

Q. What time did you get your check at the station?

Mr. Knoblock: I object; immaterial.

The Court: He may answer if he knows.

A. I don't know definitely. It was in the afternoon after the meeting.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

I believe that is all we have to present today.

The Court: All right!

Will 9:30 in the morning be all right with you gentlemen?

Trial Adjourned at 4:30 o'clock P. M.

1182

January 16, 1942.

Trial Resumed at 9:30 o'clock A. M.

Appearances:

Same as before.

(Discussion off the record.)

HAROLD JAMES DILLEY, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Knoblock.*

Q. Will you state your name?

A. Harold James Dilley.

Q. Are you one of the defendants in this case?

A. Yes.

Q. Are you one of the defendants in this case?

A. I am.

Q. You will have to speak louder.

A. I am.

Q. Directing your attention to the 2nd day of January, 1942, at approximately 7:30 A. M., I will ask you if you met Mr. Gimming and Mr. Brewster.

A. I did.

Q. And where did you meet them?

A. Near the East Peoria police station, across the street probably fifty feet this side, west.

Q. And did you get into their automobile?

A. I did.

1183 Q. Who was driving?

A. Mr. Gimming.

Q. And where did you sit?

A. I sat in the back seat.

Q. And where did Brewster sit?

A. He sat in the front seat with Mr. Gimming.

Q. Where did you go from there?

A. We drove across the river and down Washington Street.

Q. And at the Hiram Walker crossing or the Persimmon crossing, whichever it is called, who, if anybody, did you see?

A. We saw Mr. Kipling.

Q. Was anyone with him?

A. No, I didn't observe anybody with him.

Q. At that place did you hear Mr. Gimming say this, or this in substance to Mr. Kipling: "They may go out to the west but they are not coming back. You are not coming back, either. We have got enough to get you and the rest of them"?

A. I never heard anybody saying anything like that.

Q. Was there any remark by any one of the three parties in the automobile in which you were riding to Mr. Kipling at that time?

A. It was impossible. The windows was wound up.

Mr. Heyl: I move to strike the answer as not responsive.

The Court: Yes.

Q. Did you make any remarks to Mr. Kipling?

A. No.

Q. Did any of the three of you make any remarks to Mr. Kipling at that time?

A. No.

1184 Q. After that occasion, what did you do, if anything?

A. We turned around and drove to Allied Mills; followed Mr. Kipling.

Q. What was your purpose?

Mr. Heyl: Immaterial what his purpose was.

The Court: He may answer.



A. There had been a rumor—

Mr. Heyl: Objection.

Mr. Knoblock: Let him finish!

A. There had been a rumor around that Mr. Kipling was going to get us boys.

Q. By "us", you mean the striking employees?

A. The striking employees.

Mr. Heyl: I move to strike that as hearsay and incompetent.

The Court: It may stand.

Q. Where did you follow Mr. Kipling to with reference to the Iowa junction?

A. Well, we followed him to the Allied Mills.

Q. And did Mr. Gimming bring his car to a stop behind Mr. Kipling's car there?

A. No, it was beyond. We slowed down by the Allied Mills first, and then we went, I would say, oh, about the best I can give is that Elm Grove Tavern beyond the Allied Mills. We went—I don't recall the distance because I have never rode that road enough to know, but we went possibly a quarter of a mile beyond the Elm Grove Tavern.

Q. You mean a quarter of a mile beyond Allied Mills by the Elm Grove Tavern? Isn't that correct?

A. Well, yes.

1185 Q. What did Mr. Kipling do, if anything, with reference to his automobile there?

A. He stopped.

Q. Where were you with reference to his stop when he stopped?

A. Directly behind him.

Q. Did you observe anybody else on the other side of the road at that time?

A. I observed Mr. Totten and Mr. Lucas.

Q. Where was Mr. Totten at that time?

A. Sitting in his car behind the wheel.

Q. Did you observe Mr. Lucas?

A. I did.

Q. Where was he standing?

A. He was standing outside the car with his hand on the car door.

Q. What did Mr. Totten and Mr. Lucas do just as you came to a stop?

A. Just as we came to a stop, Mr. Lucas got in the car and they drove away.

Q. At any time there did you see Mr. Lucas throw any bottle? What direction did they drive?

A. They drove toward Peoria.

Q. At that time did you see Mr. Lucas at any time throw any bottle with any benzine or any inflammable fluid of any kind toward any train?

A. I never saw Mr. Lucas throw anything.

Q. Was he in full view of you at all times as you drove up there?

A. He was.

Q. Then what happened after they left?

A. After they drove away, Mr. Kipling drove away and followed them. We was going to turn around also, 1186 and about that time I heard some shooting and a lot of commotion and steam blowing from the engine that was coming along there at the time, and I jumped out of the car and ran across the highway on the shoulder to see what was going on and, as I got there, I was knocked down.

Q. Knocked down by what?

A. A slug. I got shot.

Q. Do you know where that shot came from?

A. Yes.

Q. Where?

A. It came through the curtain of the engine because I could see the flashes coming through there.

Mr. Heyl: I move to strike the latter part as a conclusion.

The Court: He said he saw the flashes.

Mr. Heyl: That is right. I submit the other isn't, but that is a conclusion.

The Court: It wouldn't have much weight. It is a conclusion. I think it may be stricken, if you want to be technical, because you can't tell—

Q. After you were shot, what did Mr. Gimming and Mr. Brewster do?

A. They picked me up and put me in the car, and took me to the Proctor Hospital. We stopped at the Bartonville City Hall and called—I don't recall that doctor's name—and he examined me, and said they had better take me to the hospital. I believe it was Williams, though. I am not right sure.

Q. At any time since this strike was called on December 28, 1941, have you made any threats or committed any acts of violence against the employees or property of this plain-

tiff, or thrown any stones or clubs, or anything of that kind or characer?

1187 A. I have not.

Mr. Knoblock: All right!. You may cross-examine.

*Cross-Examination by Mr. Heyl.*

Q. When you were taken to the hospital in this car, where did they park the car?

A. At the hospital, you mean? Right directly in front.

Q. Directly in front of the hospital?

A. Yes.

Q. Which side? Which door? There are two doors to the Proctor Hospital.

A. You kind of confuse me there because I am really not very well acquainted with that neighborhood. It was the front of the hospital, I would say.

Q. Toward the river?

A. What is the street it faces?

Q. Second Street is the street from Jefferson south past the hospital. Fisher Street is on the other side.

A. It's kind of confused, but it seems to me like it was the front of the hospital, the way it faced.

Q. That would be on Second Street. About where was this car parked with reference to the front door?

Mr. Knoblock: I object as immaterial.

Mr. Heyl: It is very material. We will show a reason later.

The Court: He may answer.

A. Well, now, I couldn't give you the exact location. It was near the front door, I'd say.

1188 Q. Now, whose car was that?

A. John Gimming's.

Q. And then they took you to the hospital, and you remained there, is that right?

A. That's right.

Q. Now, did you observe what was in the automobile they took you to the hospital in on the floor of the automobile?

A. Well, I couldn't exactly recall that, no.

Q. Some rocks and brickbats, weren't they?

A. No.

Q. You are sure of that?

A. I am not sure that there was anything in there. I don't recall that.

Q. Could you recognize any part of this automobile, the inside of it, if you would see it? The seats and seat covers?

A. Well, I have seen the car several times, and the chances are I would.

Q. Now, what was your purpose in going down to the Allied Mills on the day that this transaction occurred?

A. May I start from the first?

Q. Just answer my question first, will you, please?

Mr. Heyl: Read the question to him.

(Question read by reporter.)

A. Well, Mr. Gimming come by and picked me up at the P. & P. U. junction, as I told you, and he said, "Do you want to take a ride down near Hollis?" I said, "I don't mind if I do." I said, "Although I have worked all night, I have been on picket duty here, I just feel kind of woozy, and it might do me good."

Q. What was—

1189 A. I am not finished answering. He said, "I would like for you to go down with us because we understand Mr. Kipling is going to get a few of the boys today, so we will just go down and see what Mr. Kipling does."

Q. Where was Kipling at that time when this conversation took place?

A. Well, I couldn't say as to that.

Q. And did you see Kipling that morning before you got down to the Hiram Walker crossing?

A. No.

Q. And when you got down to the Hiram Walker crossing, you saw Kipling?

A. We saw his car.

Q. Did you have any conversation with him at all?

A. It was impossible.

Q. Did you have any conversation with him?

A. No.

Q. Your car was close to him, wasn't it?

A. Yes.

Q. How close was it?

A. Oh, I would say close as from here to Mr. Coyle is as near as we got to him.

Q. Did he say anything to you?

A. No.

Q. What was the purpose of your going there at that crossing at that time?

A. Just picked him up there at the crossing, and we just pulled up behind him to see what was going on.

Q. What business had you following Kipling?

Mr. Knoblock: I object as having been asked and 1190 answered.

The Court: He may answer.

A. What business was it following him? As I said, there was a rumor around that Mr. Kipling had made threats he was going to get some of us fellows that were on strike, that he was going to make it hot for us.

Q. When he made his threat to you, you thought it was necessary to press him and keep right up with him, did you?

Mr. Knoblock: I object.

The Court: He may answer.

A. No, he didn't make that threat directly to me.

Q. What was your purpose in going down there and following Kipling on the road?

Mr. Knoblock: I object; asked and answered.

The Court: He may answer.

A. As I told you, if he pulled any rough stuff I was merely as a witness.

Q. You were going to take a hand in the rough stuff, were you?

Mr. Knoblock: I object.

The Court: He may answer.

A. No.

Q. What were you following Kipling for if you knew there was a rumor he was going to get you fellows, as you stated on your direct examination?

A. Because we have got to have witnesses the same as the company.

Q. And you have got to have plenty of "strong arm" men along if there is any trouble? Is that what you mean?

Mr. Knoblock: I object.

The Court: Sustained as to that.

1191 Q. After you saw him at the Hiram Walker crossing, you stopped again, did you not, at the Iowa Junction? M. & St. L. junction?

A. We didn't come to a full stop there. We slowed up. He pulled up like he was going to stop, and we pulled up behind him.

Q. The train was going along near where Kipling was, was it not?

A. Yes.

Q. Did it pass at the Hiram Walker crossing while Kipling was there?

A. Yes.

Q. Did you see Kipling do anything except sit in his automobile?

A. No.

Q. Did he make any threats to you or anybody else?

A. No.

Q. He waited until the train passed the crossing before he started up; didn't he?

A. Yes.

Q. Is that right?

Mr. Knoblock: Do you recall the question now?

(Question read by reporter.)

A. The engine had passed. I don't recall how many cars.

Q. The next place you saw him was down at the Iowa junction?

A. Well, a little—yes.

Q. Then he stopped again down by the Central Illinois Light substation, didn't he, below the viaduct? Below the South Adams Street viaduct?

A. You kind of confuse me on that.

The Court: Read the question.

(Question read by reporter.)

A. No, I don't remember him stopping anywhere.

Q. Did you stop there?

1192 A. No.

Q. Then where was the next place you stopped?

A. Well, the next place is where the—that was beyond the Allied Mills.

Q. It was right across from the Allied Mills, wasn't it, at the switch?

A. No. No.

Q. You stopped there, didn't you?

A. No. No, we didn't stop there.

Q. Weren't there some cars set out there?

A. If there was, I didn't see them.

Q. You don't say that they were not set out?

A. No, I couldn't say that.

Q. Then you went down to the Elm Grove Tavern?

A. Yes.

Q. And came back?

A. Beyond the Elm Grove Tavern.



Q. How far did you go beyond?

A. Oh, I'd say four or five blocks beyond there.

Q. What was the purpose in your going down that road that morning and turning around?

A. We was following Mr. Kipling, as I said.

Q. He wasn't ahead of you at that time?

A. Oh, yes.

Q. Mr. Kipling wasn't down below the tavern, was he?

A. Yes.

Q. You are sure of that?

A. Yes.

Q. Well, where was Mr. Lucas at the time you 1193 turned around down there?

A. We didn't turn around, only when they brought me back to the hospital.

Q. Well, you say that this happened four or five blocks below the Elm Grove Tavern?

A. Yes.

Q. You are sure of that, are you?

A. As near as I can recall, yes.

Q. Didn't you go in the Elm Grove Tavern and buy a drink for several fellows before this occurred?

A. No.

Q. Were you in the Elm Grove Tavern?

A. Yes, I went in the Elm Grove Tavern.

Q. When did you go in the Elm Grove Tavern?

A. When we first got down there.

Q. You saw the proprietor—not the proprietor, but the owner of the property who lives in a little house. You saw him on the railroad track, didn't you?

A. No, I wouldn't know him.

Q. Did you see a man on the railroad track before this train arrived?

A. No, I don't recall any.

Q. Isn't it a fact that you told the man that was walking across the railroad track before this train arrived that he had better get back because there was going to be trouble with that train?

A. No, not me.

Q. Did you talk to anybody that was on the railroad track?

\* A. No, not me.

Q. Did you get there before the train did?

1194 A. We stopped at the tavern, and I don't believe that the train had got there yet.

Q. Then where did you go? Go down below?

A. Yes.

Q. How many fellows were there at the tavern?

A. I couldn't say. I don't really remember; three or four.

Q. What was the purpose of your waiting at the tavern?

A. I went in and got two cigars.

Q. What was your purpose in waiting until the train arrived?

A. We didn't wait there.

Q. What was your purpose in waiting until the train arrived?

A. We didn't wait until the train arrived.

Q. What were you doing down there that morning?

A. I had to go in to the toilet.

Q. You drove clear down to the Elm Grove Tavern to go to the toilet?

Mr. Knoblock: I object.

The Court: He may answer.

A. No.

Q. What was your purpose in going down below the tavern that morning?

A. I had to go to the toilet when we got by the toilet, and I said, "I am going to get a couple of cigars and use the toilet."

Q. Then the purpose you had in going down there and waiting for the train was to go to the toilet, is that right?

A. No.

Q. Tell me what business you had waiting for that train down on that road?

A. I wasn't.

Mr. Knoblock: I object. He stated twice he didn't wait for the train.

The Court: Objection sustained.

Q. Did you wait for the train?

Mr. Knoblock: I object.

The Court: Objection sustained.

Q. What business did you have going down there that morning when that train was going along there?

Mr. Knoblock: I object.

The Court: He may answer.

A. I was following Mr. Kipling in Mr. Gimming's car.

Q. Were these two cars, Kipling's car and your car, the only cars down there?

A. No.

Q. Give me the names of some of the other cars that were there.

A. When we stopped and I went in to the toilet and went on down, followed on down and pulled up behind Mr. Kipling, I observed Mr. Totten's car across the road headed toward Peoria. Mr. Totten was sitting behind the wheel. Mr. Lucas was standing right outside of the car with his hand on the car door.

Q. You have told that?

A. Yes.

Q. I want to know who else you saw down there? Whose cars you saw there?

A. Well, I don't recall.

Q. Were there any others? Just answer my question. Were there any others?

Mr. Knoblock: He answered that.

The Court: He may answer whether he saw any cars.

1196 A. Yes, I saw other cars.

Q. Whose cars were they?

A. I couldn't say.

Q. Were these strikers?

A. I couldn't say.

Q. You can't identify any other person,—

A. No.

Q. —is that it?

A. Yes.

Q. You are telling the court you didn't see any other person there who was in the strike except Totten and Lucas and the two men with you?

A. I didn't see anybody else there.

Q. Did you see any cars standing there?

A. Yes.

Q. Which way were they headed?

A. It was headed toward Peoria.

Q. All of them?

A. I wouldn't say as to that, no.

Q. Did you throw any stones at that train?

A. No.

Q. Did you see a little boy about sixteen years old coming down the road about the time you got shot?

A. No.

Q. You didn't see him?

A. No, I didn't.

Q. You didn't throw a stone when he was coming down the road near you?

A. No.

1197 Q. What did you do when you got down there if you didn't throw stones?

A. I ran up on the bank on the shoulder of the highway. I heard some shooting before I ran over there. I was the first one out of the car, and I ran across the road and on the shoulder of the highway. I ran up there, and I could see the flashes coming from the cab of the engine through the curtain. The next thing I knew, I got knocked down.

Q. How far were you from the place where you stopped on the bank when you say you were shot when you heard the shooting?

Mr. Knoblock: I don't understand that.

Mr. Heyl: I will withdraw that question.

Q. How far were you from that spot when you got out of your car?

A. I would say it was the width of the highway and possibly—oh, I'd say fifteen feet from the highway.

Q. The width of the highway and fifteen feet, is that right?

A. That's near that, yes.

Q. And the engine was down in this cut, wasn't it?

A. Yeah.

Q. And you got out of the car and traveled fifteen feet and across the highway,—

A. Yes.

Q. —is that right?

A. That's right.

Q. After you heard the shots, is that right?

A. That's right.

Q. After you heard the shots and went up there to see, you got hit?

A. I did.

Q. Did you throw anything at that train?

1198 A. I did not.

Q. Did you see anyone throw any stones at that train?

A. I did not.

Q. Not a soul?

A. Not a soul.

Q. Did you see any broken windows in that train?

A. No. I didn't see any windows.

Q. Did you see any fire in that train in the cab?

A. No, only coming through the curtain was the flashes of the pistol.

Q. I understand. You have told that several times. I am asking you about the inside of the cab. Flames, did you see any flames?

A. No.

Q. Did you see any men on the locomotive?

A. I did not.

Q. It was running without anyone on it, is that what you mean?

Mr. Knoblock: I object.

The Court: Objection sustained.

Q. Did you see the engineer?

A. I did not.

Q. Did you see anybody?

A. No.

Q. And no man in your presence along that highway threw a stone at that engine?

A. No.

Q. Is that right?

A. I never say anybody.

Q. You were within sight of that train—

A. I was.

1199 Q. —for sometime before it reached that point?

A. No, I wasn't in sight of that train before it reached that point because I couldn't see it.

Q. When did you first see the train?

A. I could see the smoke. I was sitting across the highway in the car, and it hid my view.

Q. What was your purpose in sitting in the car?

A. We was watching Mr. Kipling, as I said before.

Q. He didn't do anything?

A. No.

Q. How many of you were in this car?

A. Three.

Q. Were any of you armed?

A. No, none of us.

Q. Did you have any brickbats in the car at that time?

A. No.

Q. How long did you wait there for Kipling?

A. At this point? I would say we possibly sat there two or three minutes.

Q. Were there any other cars waiting for Kipling?

A. I couldn't say as to that.

Q. Were there any other cars waiting there?

A. I seen some other cars.

Q. Whose cars were they?

Mr. Knoblock: I object. He said he didn't recognize any of the rest of them.

The Court: I think he did say that.

Q. Did you see the train switching at Allied Mills?

A. No.

1200 Q. You don't know what occurred there, then?

A. No.

Q. You don't know whether any of the occupants of your car got out there or not, then?

A. There was no occupants in my car. I would know that, certainly. There was nobody got out there.

Q. You didn't get out of the car any time from the time you left Peoria until you got out after you heard the shooting?

A. No. Oh, yes, I got out at the Elm Grove.

Q. You got out there as you went down?

A. Yes.

Q. And went in to the toilet and came out, and drove down the road a ways?

A. That's right, and pulled up behind Mr. Kipling.

Q. Then pulled up and stopped there?

A. Yes.

Q. This photograph that I show you, Plaintiff's Exhibit 4, is the Elm Grove Tavern, isn't it?

A. Yes, it looks to me like it.

Q. And Plaintiff's Exhibit 5?

A. Uh-huh.

Q. Now, when this shooting occurred, you were standing on the bank some place along there, weren't you?

A. No, we was beyond that.

Q. Which way?

A. I would say west.

Q. How far?

A. Oh, four or five blocks beyond there.

Q. Did Kipling stop at the Allied Mills?

1201 Mr. Knoblock: I object as having been asked.

Mr. Heyl: No, it hasn't.

The Court: Did he or not?

A. I answered. I said he slowed down.

Q. Did he stop? That is the question I asked you.

A. No.

Q. At no time at the Allied Mills, is that correct?

A. Not at that time we was following him, no.



Q. You followed him all the way from the Iowa junction to the point to below, several blocks below, the Elm Grove Tavern?

A. That's right.

Q. And then he turned around?

A. Yes.

Q. And when he turned around, did he stop?

A. I couldn't say whether he stopped or not. As I said before, he turned around Mr. Totten and Mr. Lucas as we pulled up there—

Mr. Heyl: I am going to ask him to answer my question. I want to know what Kipling did.

The Court: Read the question.

(Question and answer read by reporter.)

The Court: He has answered the question.

Q. Why did you turn around, then, if you don't know whether he turned around? You were following him, weren't you?

A. We didn't turn around.

Q. You stated before that you had turned around and were on the other side of the road?

Mr. Knoblock: I object. He did not say that.

The Court: Objection sustained.

Q. When did you quit following Kipling?

A. When he turned around there.

1202 Q. Then he did turn around? You said a moment ago—

Mr. Knoblock: I object.

Q. You said a moment ago that you didn't know whether he turned around or not.

Mr. Knoblock: No, he didn't.

The Court: Did he turn around or not?

A. He turned around, yes.

Q. Where did he turn around?

A. Right where I got shot.

Q. Was it before or after you got out of your car?

A. It was before.

Q. Did you go on below, then, and turn around?

A. No.

Q. You didn't get shot until after Kipling had left, is that right?

A. That's right.

Q. What I want to know is, Did Kipling turn around at the point where you say you got shot, or about there?

Mr. Knoblock: I object.

The Court: He said he did.

Q. Did you stop there, or did you go on down below the tavern?

Mr. Knoblock: I object; asked and answered two or three times before.

The Court: What is the question?

(Question read by the reporter.)

The Court: Below where Kipling stopped?

He said he did.

Q. You stated that when Kipling left, or about the time Kipling left, you heard a commotion over at the train. What was that commotion?

1203 A. I heard steam blowing out there, and it sounded to me like shots.

Q. That's all you heard?

A. That's all.

Q. How many men were up on the bank at the time you heard the commotion?

A. I couldn't say as to that.

Q. What is your best judgment?

A. It only—Well, I really couldn't say as to that. In my best judgment I saw one or two men there.

Q. Who were they?

A. A fellow that lives right there.

Q. Who were they?

A. I don't know them.

Q. Do you know anybody else connected with the strikers there except you and Gimming and Brewster?

A. No.

Q. At that time?

A. At that time only Totten and Lucas. They was gone.

Q. They were the only ones that were there?

Mr. Knoblock: I object.

Mr. Heyl: I wouldn't ask him to tell anything he didn't see.

Q. I want to know the names of the men you saw there along that bank.

Mr. Knoblock: I object. He answered it three or four times.

The Court: I think he didn't see anybody there except those people.

Mr. Heyl: All right, if that is the way they want  
1204 to leave it.

That's all.

Mr. Knoblock: We are asking the court if Mr. Dilley

can be excused from further attendance because of what the doctor said.

The Court: As far as I am concerned.

Does the plaintiff have any desire for this defendant to remain?

Mr. Heyl: No.

The Court: You may be excused.

1205 H. E. COLE, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to:

*Direct Examination by Mr. Knoblock.*

Q. Will you state your name?

A. H. E. Cole.

Q. And are you one of the defendants in this case?

A. I am.

Q. And were you present in court when Adolph Rinck testified in behalf of the plaintiff?

A. Yes, sir.

Q. Were you present on either December 29 or 30 when Adolph Rinck approached the picket line with his truck?

A. On the 29th.

Q. And I will ask you if you said this, or this in substance to him: "You can't go through with that truck. You said you wouldn't bring it back?"

A. That's right.

Q. Did you tell him he couldn't go through?

A. I did not.

Mr. Heyl: I object to the leading form.

He said he said it.

The Court: It is leading.

Q. What was the conversation you had?

A. He pulled up there and stopped, and I said to him, "I understood you wasn't going to bring the truck back in this afternoon."

Q. What else happened, if anything?

1206 A. He said he called his local in Chicago, and they told him to go ahead. I said, "If your local said so, you had better do as they tell you."

Q. Did you make any endeavor of any kind or character to stop him?

A. I did not.

Q. Did you threaten him in any manner or form, by language or threats or stones or anything else?

A. I did not.

Q. Is that the only time you have been mentioned by any witness?

A. Yes, sir.

Mr. Knoblock: You may cross-examine.

*Cross-Examination by Mr. Heyl.*

Q. Who were the other people that were there at that time?

A. I only remember of one, and that was William Lord. He drove out there with me.

Q. What was he doing there?

A. On picket duty.

Mr. Knoblock: I object. He is not a picket.

The Court: I suppose that is what he was doing there.

Q. What was he doing there?

A. On picket duty.

Q. Now, did you see Mr. Rinck on the following day?

A. No, sir.

Q. Were you there the second day, December 30?

A. No, sir.

Q. And was there anyone there except you and the other man you have mentioned as a picket?

1207 A. There was several around there, but I couldn't say as to who they were.

Q. Were they former employees of the railroad?

A. There was two or three others I remember of on picket duty:

Q. Who were they?

A. I do not know.

Q. Were there any there who were not on picket duty?

A. Not that I know of.

Q. Then there were five or six there altogether of those pickets?

A. There was about five, as I remember.

Q. This was at 3 P. M. on December 29, 1941?

A. Right near that time, yes, sir.

Q. You stopped his truck, didn't you, by getting out in front of it?

A. We were parading across.

Q. Just answer my question. You stopped the truck by getting out in front?

Mr. Knoblock: Let him answer it in his own way.

The Court: Answer whether it stopped.

A. No, we didn't stop it.

Q. You got out in front of it, didn't you?

A. I say we were walking across the road.

Q. Didn't you get out—

Mr. Knoblock: That is an answer.

Mr. Heyl: I have a right to an answer to that question.

The Court: Whether you stopped, or asked him to stop.

A. We did not stop it.

Q. You were in front of it when it stopped?

1208 A. I was not.

Q. Some of the others were?

A. I wouldn't say what other people were doing. I was not.

Q. Were some of the rest in front of him?

A. I couldn't say.

Q. Couldn't you see?

Mr. Knoblock: He said he didn't know.

A. I do not know.

Q. Could you see the other men while you were there?

A. Yes.

Q. Did you see any of them in front of it?

A. No.

Q. Where were they?

A. They were moving around.

Q. How wide is that driveway?

A. Oh, I would say fifteen, twenty feet.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

1209 FRANK W. LUCAS, called on behalf of the defendants, and having been previously sworn, testified as follows, in answer to:

*Direct Examination by Mr. Knoblock.*

Q. Will you state your name?

A. Frank W. Lucas.

Q. And you have heretofore testified in this case, have you?

A. Yes.

Q. Now, are you one of the defendants in this case?

A. Yes.

Q. Directing your attention to—Were you in the court room when Mr. Sweet testified in behalf of the plaintiff?

A. Yes.

Q. And you heard him detail a certain conversation that he stated took place between himself and Mr. Chandler in the Union Station in this city?

A. Yes.

Q. I will ask you this: Did you hear Chandler say this, or this in substance, to Mr. Sweet on that occasion: "You had better not ride that train west. If it goes out, it won't get to Hollis"?

A. No.

Q. Did you hear Mr. Chandler give him any kind of threatening conversation in any manner or form on that occasion?

A. No, sir.

Q. Later, on the outside of the platform, did you hear George Kneisley say the same thing to him, or that in substance?

A. No.

Q. Now, the fact of the matter is that day what 1210 did you and Mr. Kneisley do with Mr. Sweet?

A. He gave us his promise that he wasn't going to pilot no more jobs, so we took him to the picket line to get his automobile.

Q. Who took him over there?

A. George Kneisley and myself.

Q. How far was that trip?

A. That was from the Union Station to the head of the lane as you go into the yards.

Q. And referring to the date of January 2, 1942, I will ask you where you met Leo Totten that morning.

A. At the Union Station.

Q. At about what time of the day was that?

A. Well, as near as I can recall, it was around 8:30.

Q. And was there anyone else with you and Mr. Totten on that occasion?

A. No.

Q. Where did you and Mr. Totten proceed to?

A. We proceeded down Washington Street to Hollis, as I stated before.

Q. And what was your purpose in going?

A. Well, we had word that Funk was going to be on that engine, and that him and Gifford had an argument as to



who was going to be the next pilot, and we wanted to be sure which of the two was on the engine.

Q. Was that for information purposes?

A. It was.

Q. About what time—Describe what you and Mr. Totten did as you got down in the vicinity of Hollis, everything that happened there.

A. We went to Hollis and turned around and, as we was coming back, we saw the train coming. At this one place we got out, and I saw who was running the 1211 engine.

Q. How far did you leave the car?

A. I didn't leave it at all; just stepped on the running board.

Q. Did Mr. Totten get out of his car at any time?

A. No.

Q. Could you tell who was running the engine?

A. As far as I could tell, it was Gulick. I recognized him by that shirt he had on the other day in court.

Q. Did you at that time throw any bottle or bottles filled with benzine or any inflammable fluid of any kind or character into the cab of that engine?

A. I did not.

Q. Did you throw anything at that time?

A. No.

Q. Of any kind?

A. I didn't throw anything.

Q. Did you see Mr. Kipling there that day?

A. I did.

Q. Where did you see him?

A. He pulled up facing us.

Q. And what did you see him do, if anything?

A. He was stopping his car, practically stopped, and was bringing his sawed-off shotgun up.

Q. What did you and Mr. Totten do then?

A. I got in the car, and we drove off.

Q. And where next did you see Mr. Kipling?

A. The next I saw him was on Adams Street about a couple of doors south of Western Avenue.

Q. What, if anything, occurred there?

1212 A. He made quite a scene there.

Q. Tell what happened.

A. He pulled up alongside—

Mr. Heyl: That was told before.

The Court: He can testify in his own behalf.

A. He pulled alongside and jumped up like a mad man and pulled his shotgun up and said, "Say your prayers, I am going to kill you right here."

Q. How many times did he say that?

A. I would say at least twenty.

Q. What did he say to Mr. Totten?

A. He said, "You, too, Jack. You're in a hell of a mess yourself. I will just finish you off, too."

Q. What did you do? What did you see with reference to him holding the gun? What occurred there?

A. He was holding the gun pointing right at me.

Q. What was he doing?

A. He had his finger on the trigger, and he was snapping that safety on and off.

Q. Did he appear to be angry?

A. He sure was!

Q. And about how long did you remain there before the police officers came?

A. Well, in my best judgment it was around twenty-five to thirty minutes.

Q. What did you observe Mr. Kipling do while you were there with reference to attracting the attention of anyone?

A. We sat there probably twenty minutes, and here come a police car down Adams Street. They drove up 1213 to Western Avenue and saw some girls. I don't know what he thought but, anyway, he turned off Western Avenue, and Kipling waved that shotgun around through the air, trying to attract their attention.

Q. Did they stop?

A. No, they did not.

Q. You were later taken where?

A. Taken to the City Hall.

Q. On the occasion that Mr. Kipling referred to on the date of January 2, 1942, at the Elm Grove Tavern at Hollis while you and Mr. Totten were there, I will ask you if you saw any rocks thrown by anyone or any shots?

A. No, not when we left there there hadn't been a thing happening.

Mr. Knoblock: I think you may cross-examine.

*Cross-Examination by Mr. Heyl.*

Q. Whom did you see down there near this Elm Grove Tavern?

A. I didn't see anyone I recognized but Kipling.

Q. Did you see any other cars?

A. Oh, there was cars.

Q. Did you see Dilley?

A. No.

Q. Did you see any other strikers down there?

A. No.

Q. Did you see any men standing along the bank of the road?

A. There was nobody standing on the road.

Q. Nobody at all?

A. No.

Q. Anybody running along there?

A. No.

1214 Q. And where was the engine when you left?

A. They was still going when I left there.

Q. Where were they with reference to the Elm Grove Tavern?

A. They was south of the Elm Grove Tavern.

Q. How far south?

A. I couldn't say as to that.

Q. Where did you stop your car and wait for this train?

A. We didn't wait for it. We met it.

Q. Where did you stop your car?

A. We met the train and we stopped, and I got out and looked to see who was running the engine.

Q. You stopped before the train reached you?

A. No, we pulled up just as we met the train and stopped.

Q. Where did you stop your car on the road with reference to Elm Grove Tavern?

A. It was a little south of Elm Grove Tavern.

Q. It was right nearly in front?

A. I didn't pay any attention to Elm Grove.

Q. It was in front, was it?

A. Somewhere near it.

Q. Will you look at the photographs that have been offered in evidence in this case, and state if you can identify the place where you stopped your car?

A. Yes, we stopped near there.

Q. All right! Which picture are you looking at?

A. I looked at all of them.

Q. Any particular picture that shows the place where you stopped your car?

A. This one here (indicating). We stopped along in here some place.

Q. That is the picture marked "Plaintiff's Exhibit 6," is that correct?

A. I couldn't say just exactly where we stopped.

Q. You stopped some place—

A. Somewhere near in this picture here.

Q. —some place that is shown in the picture along the railroad; is that correct?

A. I couldn't say it was in this exact picture. I said somewhere in the near vicinity.

Q. How near?

A. I couldn't say as to that. I never measured it off.

Q. Do you recognize the tracks there along that picture?

A. Yes. That track runs some distance along that way there.

Q. You stopped on this shoulder of this road, did you not?

A. No, not on that shoulder; somewhere in the vicinity of there.

Q. How close did you stop to the mail box?

A. I couldn't say as to that. I never saw the mail box.

Q. Did you see the guard rail?

A. Yes, we saw the guard rail.

Q. How close to the guard rail?

A. I couldn't say.

Q. How many feet?

A. I couldn't say.

Q. Were you north or south of the guard rail?

A. This side (pointing).

Q. The Peoria side?

A. No, south of the guard rail.

Q. How far?

A. I couldn't say as to that.

Q. Haven't you any judgment at all?

1216 A. No, I never paid any attention except being there.

Q. Did your car stop on or off the pavement?

A. I think two wheels were on, and two wheels were off.

Q. And you were out of the car, and Totten was in the car?

A. That's right.

Q. Did Kipling come up before you stopped?

A. No.

Q. He came up after you stopped?

A. We was sitting there. We had stopped.

Q. And you were out of the car?

A. When he drove up, yes.

Q. You were just getting back in the car when he drove up?

A. No, I wasn't. I was standing at the door when he drove up.

Q. You were ready to get in?

A. I recognized his car with the spotlight. I looked a little closer, and there Kipling was.

Q. You were ready to get in the car when you first saw him?

A. When I saw him I got in the car. I don't know as I was ready to get in.

Q. And you left immediately?

A. Yes.

Q. And he turned around and followed you?

A. He must have.

Q. Did you see him turn around?

A. No, I didn't see him turn around.

Q. Did you see anyone throw anything at that train?

A. No, I told you awhile ago nothing had happened when we left there.

Q. Did you see anything thrown at the train at the Allied Mills?

A. We weren't at the Allied Mills.

1217 Q. Were you passing there?

A. We passed there probably twenty to thirty minutes before they ever got there.

Q. Did you see this train at the Cedar Street crossing?

A. No.

Q. Did you see it at the Union Station?

A. I don't know as I saw it at the Union Station.

Q. Did you stop at the Union Station?

A. I couldn't say as to that, either.

Q. Did you see it when it left East Peoria?

A. No.

Q. Did you get out of your car at the Union Station?

A. I sure did. I was talking to Louis Righter.

Q. Where were you when this train was at the Union Station?

A. I don't know as I was there when the train was at the Union Station.

Q. Were you or not?

A. Not that I know of.

Q. Did you see the train there?

A. No.

Q. Did you see the train at any time in East Peoria?

A. No, I didn't.

Q. Did you see it any place along the road?

A. No.

Q. The train stopped at the Union Station?

A. I don't know.

Q. You could have found who was on the engine at the Union Station?

A. I didn't see it at the Union Station.

Q. You could have found out there?

1218 A. I probably could.

Q. Did you start out before he left?

A. I don't know. I didn't know there was going to be a train that day.

Q. Why did you drive to Hollis?

A. To see if there was a train.

Q. You weren't going down, as you stated in direct examination, to see if Funk was on the train?

A. That's right. That is why we was down there.

Q. If you didn't know there was to be a train, why did you go down? That is the way you are trying to fix it now.

Mr. Knoblock: I object.

A. I am trying to tell you the truth.

Q. You didn't know this train was going out that day?

A. Not for sure.

Q. You could have found that out in East Peoria?

Mr. Knoblock: I object.

The Court: He may answer.

A. We don't have any way of finding that stuff out.

Q. You had pickets along the line?

A. We had them in East Peoria.

Q. Didn't you attend a meeting of the union the night before which was attended by Keiser and Coyle and union men with reference to this train going out the next day?

A. No.

Q. You didn't attend this meeting?

A. No.



Q. You didn't attend any meeting?

A. The day before.

1219 Q. Were Keiser and Coyle there?

A. They were present, yes.

Q. At that time the plan was made to follow this train to Hollis, wasn't it?

A. No.

Q. You are sure of that?

A. Absolutely.

Q. Did you talk about it?

A. No.

Q. Talk to anybody about following that train?

A. No.

Q. So your purpose in going down there, then, was to find out if Funk was on a train you didn't know was going out?

A. That's right.

Mr. Heyl: That's all.

The Court: Anything else?

Mr. Heyl: I want to ask one more question.

Q. As I understood you to say, Mr. Kneisley—or Mr. Kipling—when he stopped you at Washington Street and Adams Street had this gun and said twenty times or more, "Say your prayers, I'm going to kill you"?

A. Do you want me to tell you what he said?

Q. I am asking you to answer my question.

A. He sure did.

Q. Is that what he said?

A. Yes.

Q. Did you make any protest to anyone about his stopping you at that time?

A. No, I didn't have any chance.

1220 Q. You were there twenty-five minutes, were you?

A. How are you going to get out of a car? I am trying to answer your question.

Q. Did you try to get out of your car?

A. No.

Q. Did you make a protest to the police officers when they came there you were stopped by a man that had no right to stop you?

A. I did not.

Q. Did you make any protest at all?

A. No.

Q. You knew you were guilty, and you didn't make any protest?

A. No, I wasn't guilty of nothing.

Q. You never complained of Kipling to bystanders or police officers that this man was restraining you on the road without any right?

A. No, he was putting on a show himself.

Q. When the officers got there, he wasn't putting on any show?

A. He sure was.

Q. What did he do when the officers arrived?

A. "Take these men in."

Q. Did you say to those officers, "Why are you taking these men in?"

A. No.

Q. You never said anything, is that right?

A. That's right.

*Redirect Examination by Mr. Knoblock.*

Q. Why didn't you get out of your car down there?

A. The man was waving that shotgun down there, pointing it in my face, and saying he was going to kill me, so I sat right in the car.

1221 Q. From his actions and his attitude, were you in any fear for your life?

A. Yes.

Mr. Heyl: Objected to as asking for a conclusion.

The Court: He answered, said he had.

Mr. Knoblock: One question I forgot to ask on direct.

May I have the privilege of asking that now?

The Court: Yes.

*Further Direct Examination by Mr. Knoblock.*

Q. On this occasion near the Elm Grove Tavern did you at any time there slap your hands on your knees and laugh?

A. No.

Mr. Knoblock: That's all.

The Court: Is that all? I think we will take a ten minute recess.

(Recess.)

1222 LOREN VERN JOHNSON, called on behalf of the  
defendants, and having been first duly sworn, tes-  
tified as follows, in answer to

*Direct Examination by Mr. Knoblock.*

Q. Will you state your name?

A. Loren Vern Johnson.

Mr. Heyl: I want to object to this witness testifying.  
He has been in the court room during the testimony of  
some of the witnesses.

Mr. Knoblock: That is not true.

The Court: We can find out quickly. Have you been in  
the court room during the trial?

A. I sat down; not during the trial.

Mr. Heyl: He was here this morning.

Mr. Knoblock: He was not.

The Court: Were you here this morning sitting while  
the trial was going on?

A. No, sir.

The Court: Did you hear any witnesses testify?

A. No.

Mr. Heyl: I was informed he was.

Mr. Knoblock: I tried to call him. He wasn't in the  
court room.

Q. Where do you live, Mr. Johnson?

A. I did live at 3123 South Adams.

Q. Did you live there on January 2, 1942?

A. That's right.

Q. Drawing your attention to that date of January 2,  
1942, at about 9:30 A. M., I will ask you if your atten-  
1223 tion was drawn to any incident there on that occasion.

A. It was, yes.

Q. And how was your attention drawn to it?

A. Well, by loud talking and vile language.

Q. And what did you do?

A. I opened the window to see what was going on.

Q. What did you see and hear there?

A. Well, I saw a man stop a car there, had a shotgun  
out in front of it walking in front of the car.

Q. What was he doing with the shotgun?

A. He had it like he was going to shoot a rabbit.

Q. What did he say, if anything?

A. He said, "I'll blow your damned head off."

Q. How many times did you hear him say that?

A. Oh, probably four or five.

Q. Four or five times, you mean?

A. Yes.

Q. Did you hear him make any other statements to anyone there?

A. Yes.

Q. What?

A. There was a South Adams street car coming, and he was ringing his bell to go. He said, "Damn you, just sit there."

Q. And which man said that?

A. Mr. Kipling.

Q. He is the man with the gun?

A. Yeah.

Q. Can you recognize any of the men here in this court room that was in that car that morning?

A. Well, there's one right there (pointing).

1224 Q. Will you come down and point him out to us?

A. Stand up there!

The Court: Let him stand up.

Mr. Knoblock: Stand up, Mr. Lucas. (Person named rises.)

Q. Is that the man?

A. No, that wasn't the man with the gun.

Q. Was this man in the car?

A. He was in the car, yeah.

Q. Did you know any of the parties in that altercation down there prior to that occasion?

A. No.

Q. Have you ever been employed by the T. P. & W. or any road affiliated with it?

A. No, sir, no railroad.

Q. What is your business?

A. Barber.

Q. Have you any interest whatsoever in this law suit?

A. No.

Q. Were you subpoenaed to come here?

A. Yes, sir.

Mr. Knoblock: You may cross-examine.

*Cross-Examination by Mr. Heyl.*

Q. Where do you work?

A. 1409 Lincoln.

Q. How long did you live at 3123 South Adams Street?

A. Oh, I lived there about six months.

Q. Did you live in the house as a tenant, or were you there as a roomer?

1225 A. I lived there with my sister.

Q. Your what?

A. My sister.

Q. Was she the tenant?

A. She had the apartment, yes.

Q. I see. When did you move away from there?

A. Last Sunday.

Q. Last Sunday?

A. Yes.

Q. Where did you move to?

A. Idaho and Park Avenue.

Q. Where do you barber?

A. 1409 Lincoln.

Q. You work for somebody there?

A. Mr. Galles, yes.

Q. How long have you worked there?

A. How long have I worked there? About three months.

Q. And do you know any of these defendants in this case?

A. No, sir.

Q. And do you know Mr. Kipling?

A. No, sir.

Q. How did you happen to say in your direct examination that you saw Mr. Kipling there?

A. I read it in the paper, and saw the man with the shotgun.

Q. I see. And you concluded that you saw Kipling? Will you tell us what kind of a looking man he was?

A. Yes, he had boots on and an overcoat.

Q. Boots? You are sure of that?

A. He had boots on, laced boots.

1226 Q. How tall was he?

A. I imagine about five, eight.

Q. He was a blonde?

A. I didn't see his hair. He had his cap on.

Q. You couldn't tell that?

A. No.

Q. How close were you to this place?

A. Just across the street.

Q. How wide is the street there?

A. How wide is Adams?

Q. I am asking you. I am not testifying. I am asking you.

A. Well, what is the width of a street?

Q. Is that the best judgment you have as to distance? You can't tell the distance of South Adams Street? The width of it?

A. I would say about forty feet.

Q. Forty feet?

A. Yes.

Q. And were they on the east side of the street?

A. They were on the lower side, whatever you call that.

Q. That would be the side beyond the center of the street, is that right?

A. Where they should park on the right side going up Adams.

Q. The street car tracks are there on that side of the street, are they?

A. They are in the middle. Where are they?

Q. In the middle?

A. Yes.

Q. Did this street car pass?

A. No.

1227 Q. It stayed there?

A. Not until the police come.

Q. And it was a South Adams street car, was it?

A. That's right.

Q. Did you ever recite this story to anybody?

A. No, sir.

Q. At no time? Did you tell the authorities you saw it?

A. No, I didn't tell nobody. They come and served a subpoena on me.

Q. You moved away last Sunday?

A. That is right; yes.

Q. When did they serve the subpoena on you?

A. This morning.

Q. They found you all right, did they?

A. That's right.

Q. Did you tell anyone down there at all you had seen this transaction?

A. Yes, I told—

Q. This lawyer here,—



A. Right there (pointing).

Q. —Mr. Knoblock? You told him out in the hall during the last recess, didn't you?

A. Told him what?

Q. Told, when you went out with him in the corridor of this court house, what you have testified to on the witness stand? Is that what you mean?

A. No, I am only going to tell you the truth.

Q. I know you are willing to do that, but I want to know: When did you tell Mr. Knoblock what you would tell here?

1228 A. He talked to me out in the hall.

Q. This morning?

A. No, not this morning. He didn't pick me up. He didn't serve a subpoena on me until 10:30.

Q. Who served it on you?

A. I don't know.

Q. Did they serve it on you after you came up here?

A. Mr. Arends.

Q. Where did he serve it?

A. At my house, 401, Park Avenue.

Q. This morning after we took a recess, the last recess and immediately before you took the witness stand, you were seated on the left side of this court room in the front seat?

A. That's right.

Q. And Mr. Knoblock got up and asked you to come out?

A. That's right.

Q. And in the presence of Mr. Lucas, this man you identified, and Mr. Knoblock you talked to him about this case?

A. I didn't talk to anyone only the lawyer.

Q. What did you tell him?

A. Only what I saw.

Q. That is what you told him?

A. That's all.

Q. You never told a living soul about it before you talked to him?

A. Only to my family what I saw.

Q. That was in your home? You didn't tell it to the police officers or anybody that would communicate it to the defendants in this case?

A. No, sir.

1229 Q. Did you go out in the street that morning?

A. No, sir.

Q. What were you doing when you heard this noise?

A. It woke me up.

Q. You were in bed?

A. Yes.

Q. Do you work nights?

A. No, I work afternoons.

Q. You sleep in the morning, is that it?

A. Yes, sir.

Q. You were asleep in your room and you heard this, and you got up and went to the window?

A. Three rooms.

Q. You went through three rooms?

A. Their three rooms.

Q. Do you sleep in all three of them?

A. No, I don't sleep in all three of them.

Q. What about the three rooms there? What about the three rooms there?

A. There is a bedroom, living room and kitchen and a bedroom.

Q. Right in a row?

A. All in a row, that's right.

Q. And you got out of bed and looked out of the window, and looked out of the rest?

A. I got out of my bed and went in the kitchen, raised the window. I heard that commotion. I heard all that "crap" out there on the street.

Q. That's what you thought it was?

A. Yes. What would you think?

1230 The Court: Proceed.

A. A couple of kids out there with a man with a shotgun. What are you going to do with them? Scare them to death?

Q. Did the men get out of the car?

A. No, sir.

Q. Did you stay in the window there watching the entire proceedings?

A. I stayed there until the police come. I heard him tell them, "Call the police," and he said, "God damn. Someone call the police."

Q. They called the police?

A. Yes, finally.

Q. And you stood there in the window all that morning?

A. Yes.

Q. It was about 10° below zero?

A. No.

Q. Was it a warm day?

A. It wasn't so damn cold.

The Court: None of that language in here.

Remember that! Go ahead!

Q. It was quite a warm day that day, wasn't it?

A. Oh, it wasn't so warm.

Q. You stood there in your night clothes with the window up until this police officer came?

Mr. Knoblock: I object.

Q. Is that the way we understand you? I want to know: Will you answer the question?

A. What is it?

The Court: Did you stay there until the police came?

A. Yes.

1231 Q. And you stood there with the window open?

A. That's right.

Q. Was anyone with you?

A. Yes.

Q. Who was with you?

A. My brother-in-law and sister.

Q. They stood there, too, did they?

A. That's right.

Mr. Heyl: I think that's all.

The Court: Anything else with this witness?

Mr. Knoblock: That's all.

Q. Your name has always been Loren Vern Johnson?

A. That's right.

Mr. Knoblock: That's all. You may leave (to witness).

1232 A. R. OVERACKER, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Knoblock.*

Q. Will you state your name?

A. A. R. Overacker.

Q. And are you one of the defendants in this case?

A. I am.

Q. Were you present in the court room when Adolph Rink testified on behalf of the plaintiff?

A. I was.

Q. And did you say to Adolph Rinck this, or this in substance, when he came to the picket line with his car, "You can not pass"?

A. I didn't talk to the man.

Q. Did you hear anyone else talk to him on that occasion?

A. I didn't happen to be there.

Q. You were not even there, is that right?

A. No.

Q. Have you been mentioned by anyone else testifying for the plaintiff in this case?

A. I believe I was in the picture.

Q. In the picture?

A. Yes.

Q. I am handing you what has been marked as "Plaintiff's Exhibit 1." I will ask you which man you are in that picture, reading from the left toward the right.

A. Fourth.

Q. And what, if anything, do you have in your hand?

A. A strike sign.

1233 Mr. Elliott: Talk up.

A. A strike sign.

Mr. Knoblock: I think that is all.

You may cross examine.

*Cross-Examination by Mr. Heyl.*

Q. You are the one that's leaning on the strike sign?

A. Well, if you would call it leaning.

Q. The fellow that was grinning, with the strike sign in front of him?

A. Yes, that's it.

Q. You recognize the other persons in the other picture, do you not?

A. Most of them.

Q. And that was taken at what point?

A. Well, right there next to the bridge.

Q. What bridge?

A. The bridge next—

Q. The Nickel Plate crossing?

A. No, next to the Illinois Terminal.

Q. The Illinois Terminal bridge?

A. Illinois Terminal bridge.

Q. That is the entrance to the freight house? Isn't that that road?

A. Well, the entrance is, oh, I would call it a little bit west of there.

Q. This was the picket line for the freight house, wasn't it?

A. Yes. Yes, it was.

Q. You recognize all of these men, do you?

1234 A. I do most of them, yes.

Q. They are all defendants in this case, are they not?

Mr. Knoblock: I object to this.

The Court: Objection sustained. I don't suppose he knows.

Q. Do you know the two men at the end on the left side of the picture?

A. I couldn't try to identify them. I might be wrong.

Q. What is your best judgment?

A. I don't know.

Q. Have you any judgment?

Mr. Knoblock: I object.

The Court: Objection sustained.

Q. Who are the two on the other end?

A. I can't answer that.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

Mr. Knoblock: That's all.

1235 OLIVER W. KIRK, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Knoblock.*

Q. Will you state your name?

A. Oliver W. Kirk.

Q. Are you one of the defendants in this case?

A. I am.

Q. I will hand you one exhibit admitted in evidence here as Plaintiff's Exhibit 1, and will ask you if you appear in that picture.

A. I do.

Q. Are you standing or sitting down?

A. I am sitting down.

Q. And what, if anything, do you have on your shoulder?

A. I have a shillalah on my shoulder.

Mr. Heyl: What?

Mr. Knoblock: "A Shillalah," he called it.

Q. Explain, if you can, how you happened to have it there.

A. Well, there was a bunch of us gathered around the fire there, and a newspaper man came along and wanted to know if we would pose for a picture, and we didn't see anything wrong in having our picture taken, so we said we would, so he said, "Well, gather over here in a bunch, I will—where I can snap your picture, and I'll take it," so we all gathered over there close to the fire, and I had my foot up on the end of the bench, and he said, "Some of you fellows go sit on the bench," so I sat on the bench, and Bill Christoff said, "Look like Allep Aop." He said, "Get that Alley Oop club on your shoulder," so I put the club on my shoulder.

Q. At that time did you threaten anybody with this club, or menace anyone in any way or form?

A. I did not.

Q. Did you throw any rocks or missiles of any other kind or character?

A. No, sir.

Q. Do you recall the occasion on December 29, 1941, when William A. Grafelman came to the picket line and stopped his truck, and conversed with Mr. Stetler?

A. Yes, I remember him stopping there.

Q. Did you hear Mr. Stetler say this to him, or this in substance: "If you get a special agent, we will upset the truck"?

A. No, I didn't hear him say that.

Q. Did you hear any threats of any kind or character there made by Mr. Stetler or anyone else?

A. No, I didn't.

Q. You were present on that occasion?

A. I was present.

Q. Did you hear Mr. Stetler or anyone else say to Mr. Grafelman, "We won't let you through"?

A. No, I didn't.

Q. Did you see anyone at that time make any threat to Mr. Grafelman, either by language or conversation or by striking with a club or waving a club or throwing any missiles or stones or rocks of any kind or character?

A. No, there wasn't nothing like that.



Q. Are these two cases I have interrogated you  
1237 about the only two cases in which you have been referred to in this testimony?

A. Yes, sir.

Mr. Knoblock: You may cross examine.

*Cross-Examination by Mr. Heyl.*

Q. Did you ever throw a stone at one of these trains?

A. No, sir.

Q. Were you down at the Elm Grove Tavern on January 2?

Mr. Knoblock: I object to this.

The Court: He may answer.

A. No, sir.

Q. You weren't down there?

A. No, sir.

Q. Were you on the road to Hollis?

A. No, sir.

Q. On that day or any other day during this strike?

A. Not that I recall.

Q. What's that?

A. Not that I recall.

Q. You would recall, wouldn't you, if you were down there?

A. I have been out on that road, but not recently.

Q. Were you on that road any time after December 28, 1941, and prior to Sunday, January 4, 1942?

A. No, sir.

Q. And did you throw any stones at the train near this picket line that's shown in the picture, Plaintiff's Exhibit 1?

A. I would have to have an awful strong arm.

Q. Just answer my question.

A. I did not.

1238 Q. Did you see anyone ever throw a stone at the train?

Mr. Knoblock: I object to that.

The Court: Objection sustained.

Q. Now, was the club that you have termed "a shil-lalah" that you have over your left shoulder trimmed off at the end for a handle, the same as the one Mr. Grimming has?

A. No, that club was broken off on the end.

Q. The one that Gimming has is trimmed off so you have a handle there, isn't that right?

A. Mr. who?

Q. The one that Gimming has in his hand.

A. Gimming isn't even in this picture.

Q. Who is the other man in the picture with the club standing up?

A. Well, I don't exactly know his name.

Q. One of the strikers, isn't he?

A. He is one of the strikers.

Q. You notice the club he has, do you not?

A. Well, there are three clubs here. Which one do you mean?

Q. The man right across from you near the strike sign that has the club in his right hand. That shows that club is trimmed off for a handle, isn't that right?

Mr. Knoblock: I object. The picture speaks for itself.

The Court: He may answer.

A. I don't know as it was trimmed off.

Q. Was your club trimmed off that way?

A. No, sir, mine was broke off.

Q. Where did you find the club you have in your hand?

A. Under the bridge.

1239 Q. And where did the other club come from?

A. That came from under the bridge.

Q. Were you on picket duty at that point each day during the strike?

A. No, sir.

Q. Were you on picket duty at some other place?

A. I was on picket duty at the P. & P. U. junction and at the viaduct.

Q. At the Nickel Plate crossing?

A. Yeah.

Q. When were you on picket duty at the Nickel Plate crossing?

Mr. Knoblock: I object.

A. It wasn't under the Nickel Plate. It was under the 150 viaduct.

The Court: I think he may answer.

Q. The picket line was there near the Nickel Plate crossing, wasn't it?

A. It was right below the viaduct.

Q. When were you on picket duty there?

A. Well, I don't remember exact dates. I was on duty there two days.

Q. And during the time you were there, trains passed, did they?

A. Yes, sir.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

The Court: That's all. Call the next witness.

1240 C. H. KIRK, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to:

*Direct Examination by Mr. Knoblock.*

Q. Will you state your name?

A. C. H. Kirk.

Q. And are you one of the defendants in this case?

A. I am.

Q. I will now hand you what has been marked for the purpose of identification "Plaintiff's Exhibit 1", and I will ask you if you appear in that photograph.

A. I do.

Q. I will ask you if you have anything in your hands in that picture?

A. I have not.

Q. On the occasion of taking that picture, I will ask you if you at that time threatened anyone with any language or conversation, or if you threatened them with a club or missiles or rocks of any kind or character.

A. I did not.

Q. Now, referring to December 29, 1941, when Mr. Grafelman came to the picket line and Mr. Stetler just conferred with him, do you recall that occasion?

A. Yes, sir.

Q. I will ask you if you heard Mr. Stetler or anyone else say to Mr. Grafelman there on that occasion, "If you get a special-agent, we will upset the truck"?

A. I didn't hear Mr. Stetler say a word to Grafelman. I was standing on the other side of the truck.

1241 Q. You were there on that occasion?

A. Yes.

Q. Did you make any threat of any kind or character to Mr. Grafelman?

A. No, sir, never had any conversation with him at all.

Q. Did you hear anyone else say this, or this in substance, to Mr. Grafelman: "We won't let you through"?

A. I did not.

Q. Are those the only two occasions that you have been mentioned by the plaintiff's witnesses in this case?

A. It is.

Mr. Knoblock: You may cross-examine.

*Cross-Examination by Mr. Heyl.*

Q. You were across the other side of the truck from the man—

A. Yes, on the east side.

Q. You were too far away to hear what was said, were you?

A. Yes, sir.

Mr. Heyl: That is all. I move to strike the direct examination because the witness said he was too far away and couldn't hear it.

The Court: I think the latter part may be. Who is this man Grafelman?

Mr. Knoblock: Storekeeper.

Mr. Elliott: Driver of this truck.

The Court: Not the original truck carrying products?

Mr. Knoblock: No, that was Mr. Rinck.

1242 The Court: I think I remember the testimony.

The latter part of the testimony may be stricken, that he could have heard it if it had been said.

CLINTON STETLER, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to:

*Direct Examination by Mr. Knoblock.*

Q. Will you state your name?

A. Clinton Stetler.

Q. Are you one of the defendants in this case?

A. Yes, sir.

Q. I am directing your attention to December 29, 1941, on the occasion when William A. Grafelman approached a picket line where you were on duty. I will ask you if you recall that occasion.

A. Yes, sir.

Q. Did you converse with Mr. Grafelman there at that time?

A. Yes, sir, I talked to him a few minutes.

Q. Did you say this to him, or this in substance: "If you get a special agent, we will upset the truck"?

A. I did not.

Q. Did you say to him, "We won't let you through"?

A. I did not.

Q. Did you hear any one of the other members on the picket line at that time threaten him with any oral statements or conversation or with any clubs, missiles, stones, rocks, bricks or anything else?

1243 A. No, sir.

Q. Did he go through?

A. No, sir.

Q. Is that the only time that you have been mentioned in this case?

A. Yes, sir.

Mr. Knoblock: You may cross-examine.

*Cross-Examination by Mr. Heyf.*

Q. Mr. Stetler, where do you live?

A. In East Peoria.

Q. And before this strike where were you employed?

A. As a fireman.

Q. Fireman?

A. Yes, sir.

Q. On the day in question, you were on the picket line near the freight house with O. W. Kirk and C. H. Kirk, John J. Gimming and K. A. Feldt, were you not?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Were there any other persons there?

A. I think there was a man there by the name of Tracy.

Q. And you men stepped in front of this truck when he drove up, didn't you?

A. We were standing in the road but, when the truck come up, we spread apart.

Q. He came to a stop, didn't he?

A. Yes, he came to a stop.

1244 Q. And you came over to the door and asked him where he was going?

A. Yes, sir.

Q. And he told you he was going to the freight house?

A. Yes, sir.

Q. And then you asked him if he had material that was to be delivered in there?

A. I believe that was said in the conversation, yes, sir.

Q. He told you he had nothing to deliver, but that he was to pick up material consigned to the stock department in the yards?

A. As far as I know, that was the conversation.

Q. Then you turned and talked to the rest of the pickets, didn't you?

A. No, I don't believe I even moved away from the side of his truck.

Q. Did you say something to the pickets then?

A. No, sir; I did not.

Q. Then you said to him, did you not, "We might as well let all of the rest of the transfer trucks in if you let him in"?

A. I don't recall making that remark.

Q. You won't say you didn't say it?

A. I say I don't recall making that remark.

Q. And then you said that, in view of that situation, you would not let him go on?

A. No, sir, I didn't make that statement.

Q. He didn't go through, did he?

A. He did not.

Q. He turned around and went back?

A. He turned around and went back, yes, sir.

Q. That is what happened? He turned around and went back?

1245 A. He did not go through the picket line, no.

Q. Was it some other man that made some statement to Mr. Grafelman there that day?

A. No, sir.

Q. You are the only one that said anything, is that right?

A. As far as I know, yes, sir.

Q. The others were not there close to you?

A. They were standing in the vicinity, oh, maybe six or seven feet, something like that.

Q. Some of them were on the other side of the truck?

A. Yes, sir.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.



1246 WALTER McMULLEN, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Knoblock.*

Q. Will you state your name?

A. Walter McMullen.

Q. Are you one of the defendants in this case?

A. Yes, sir.

Q. Now, drawing your attention to the Merrill incident that occurred at the north end of the lane, of the T. P. & W. lane leading to their yards, on what day were you there when that occurred? Was that on December 30, 1941?

A. That was on December 30, 1941.

Q. About what time of the evening?

A. Well, it was getting dark. It was between 5:15 and 5:30, possibly 40—5:40.

Q. Now, do you recall when Mr. Thompson drove his car out there that evening?

A. I do.

Q. Will you tell us what happened?

A. He came up out of the lane, run right through the state "Stop" sign, right out on the hard road, and a truck hit him in the side on the left side of his car. It was a two-door car, and it caved the door in, and his front wheels wound up on the north side of the slab across the hard road.

Q. After the accident, what did the truck do?

A. The truck backed away so he could turn his car out on the north shoulder, and he pulled down almost to 1247 the cemetery entrance, and the truck pulled up to the north side about just below where he hit him.

Q. About how far apart were they?

A. I would say between seventy-five and a hundred feet.

Q. What did Mr. Thompson do then?

A. He got out of his car and went back to where this truck was.

Q. What did you do, if anything?

A. I was standing by the fire at the picket line there at the head of the lane, and I walked over to inspect Mr. Thompson's car.

Q. What was your purpose in doing that?

A. Why, just out of curiosity to see the extent of the damage.

Q. And what happened there?

A. I opened the car of the door.

Q. Door of the car?

A. Door of the car. I had a lantern in my hand, it was dark, and, as I opened the door, out jumps Zeno Merrill like there was somebody behind him, like a rabbit coming out of his hole.

Q. Did you or Todd or anyone else around there on that occasion order Merrill out of the car?

A. I did not.

Q. Did you know he was in there before—until you saw him coming out?

A. No.

Q. Where were you when you were opening this door?

A. I was standing toward the west of the door. I just reached over with my left hand and opened the door.

Q. Was there anything between you and Merrill as he went by?

A. Why,—

Q. The door of the car, I am referring to.

1248 A. When the car door went open, it kind of shoved me to one side, and he come out with his arms up and started swinging his arms.

Q. Did you see who he swung at?

A. Walter Kohtz was standing behind me at that time, and I saw them make a pass at each other but, as far as them hitting each other, I couldn't say.

Q. Did you see where he went from there?

A. He run across the hard road, and someone over there (I don't know who it was, it was dark), that hit him.

Q. And where did he go then?

A. He run over the barricade, stumbled over the barricade, and down into the ditch.

Q. Did anyone go down in the ditch after him?

A. Not that I saw.

Q. Who helped him up out of the ditch? Do you know?

A. W. E. Causey.

Q. Did you at any time on that occasion strike Zeno Merrill?

A. I did not.

Q. Or threaten him?

A. I did not.

Q. Did you hit him with your fists at any time?

A. No, sir.

Q. Did you touch him there?

A. No, sir.

Q. Did you make any statement, verbal statement of any character, threatening him on that occasion?

A. No, sir.

Q. Did you have anything to do with the scuffling that went on there?

A. No, sir.

1249 Q. Now, directing your attention to the statement of Carl W. Sund, who testified in behalf of the plaintiff that on December 30, 1941, at about 6 P. M.—I believe that also happened at the head of the lane—I will ask you—

A. What was that date again?

Q. December 30, 1941, about 6 P. M., when Sund was apparently on his way out of the yards. Did you, on that occasion, state to him this, or this in substance: "We have had about enough of this. Let's turn the car over"?

A. I did not.

Q. What did you actually do there that evening?

A. Well, some of the men were ganged up around his car that was talking to Carl. When I looked around, some of them was taking hold of the car (I don't know what they was figuring on doing, figuring on scaring him or what), but I come up and said they wasn't going to turn the car over.

Q. Did you see that he got safe passage through there?

A. Yes, sir.

Q. Was there any damage or any destruction of any kind or character done to Mr. Sund on that occasion?

A. No, sir.

Q. Now, referring your attention to December 31, 1941, about 3:30 P. M., and directing your attention to the testimony given by Raymond Paul Avery, I will ask you if you or any of the other members on the picket line on that occasion, in your presence and your hearing, said this, or this in substance, to Mr. Avery: "We are going to get rough. Stay off of the engines and cabooses. You know what happened to the engine this afternoon"?

A. I did not.

1250 Q. Did you hear anyone else say anything like that to him?

A. No, sir.

Q. On the occasion of his going through there on that occasion of December 31, 1941, about 3:30 P. M., did you or any of the other members on that picket line that you observed there threaten Mr. Avery by conversation, by throwing rocks, sticks, clubs or missiles of any kind or character?

A. No, sir.

Q. On the same evening of the Merrill incident, referring you to the testimony of Harold E. Kipling, special agent testifying on behalf of the plaintiff, these words or this in substance—you are alleged to have said to Kipling and I will ask you if you said this, or this in substance: "You s. b., you are next", and did Kipling reply to you this, or this in substance: "I don't think so"?

A. I said nothing of the kind. I had no conversation with Kipling at all.

Q. Did you make any threat of any kind or character to him on that occasion?

A. I did not.

Q. Or on any other occasion?

A. No, sir.

Q. On that occasion did you hear Jerry Underwood say, "If you will get out, I will beat your head off with this lantern", or that in substance, to Kipling?

A. No, I didn't.

Q. Did you hear Jerry Underwood have any conversation with Kipling on that occasion?

A. Not in my presence.

1251 Q. Referring your attention to January 1, 1942, to a conversation it is alleged you had with a man by the name of Glavash, who has testified here on behalf of the plaintiff, I will ask you if you said this, or this in substance, to Glavash: "Stay off of the locomotives. That's a place for switchmen and firemen, and it will be too bad if you don't"?

A. I had no conversation with Mr. Glavash. I don't even know the man.

Q. Did you have any conversation with him on that or any other occasion?

A. No, sir, he is a stranger to me. I don't know him.

Q. Are those the only instances that you have been mentioned here in connection with this dispute by witnesses of the plaintiff that you can recall?

A. All that I can recall, yes, sir.

Q. And have you at any time ever threatened, either

by words or conversation or by threatening with a club, stones, rocks, bricks or missiles of any kind or character, any of the employees of the plaintiff?

A. No, sir.

Q. Or any of its property?

A. No, sir.

Mr. Knoblock: You may cross-examine.

*Cross-Examination by Mr. Heyl.*

Q. Where were you when the Thompson car approached the hard road?

A. I was standing next to the barricade at the head of the lane.

Q. Next to what? The barricade? What was the barricade?

1252 A. There is a barricade along there. There is a culvert that goes through there, and there was a barricade on each side, and I was standing on the west side of the lane.

Q. Who put the barricade there?

A. I imagine the state.

Q. Were you near the picket line?

A. I was standing on the picket line.

Q. When Thompson came up there and collided with this automobile, you said you went down to inspect his car, is that it?

A. That's right.

Q. You weren't interested in the truck, were you?

A. No, sir.

Q. Where was the truck?

A. The truck pulled off on the left hand side on the north shoulder.

Q. And he was on the north shoulder, too, wasn't he?

A. Yes, sir.

Q. And you went down to examine his car, and you took your lantern with you?

A. I had a lantern.

Q. You had it with you?

A. Yes, sir.

Q. And you looked in the car to see who was in the truck seat, didn't you?

A. No, sir.

Q. What did you open the door for?

A. Just to see the extent of the damage.

Q. That was the only purpose you had?

A. That's all.

Q. Then Mr. Todd wasn't correct when he said  
1253 that you and he saw somebody crouching in the back seat?

A. I am telling you what I saw.

Q. You were ahead of Mr. Todd?

A. Mr. Todd was on the opposite side.

Q. Of what?

A. Thompson's car.

Q. When you went up to open this door, was Mr. Todd on the same side of the car?

A. By the time I got there, he was on the same side.

Q. Who else was up there trying to find out how badly that car was damaged?

A. There was no one at that time.

Q. When Mr. Zeno Merrill dashed out of the car, you just stood there, did you?

A. It shoved me to one side.

Q. He shoved you to one side?

A. Yes, sir.

Q. Didn't hurt you, did he?

A. I don't think he did.

Q. Is there any doubt about it? You weren't hurt there, were you?

A. No.

Q. Then he dashed across the street, did he?

A. Yes.

Q. Did anyone go across the street with him?

A. Not that I saw.

Q. Then Mr. Todd was mistaken when he testified in this court yesterday that two men went across the street with him, is that right?

Mr. Knoblock: I object.

1254 The Court: Objection sustained.

Q. He just walked peaceably across the street?

A. I told you he come out of there like a rabbit out of his hole.

Q. Is that how he went?

A. Like a rabbit, just exactly.

Q. Did anyone follow him?

A. No, sir.

Q. When he got across there, he hurt himself?



A. No, sir, a man hit him and he went down in the ditch.

Q. Did you see him do anything to that man?

A. He had his arms going.

Q. Did he do anything?

A. He made a pass. I couldn't see in the dark.

Q. Who was that man?

A. C. L. Brown.

Q. We have another man, Brown. Now—

Mr. Knoblock: He was there all the time.

Mr. Heyl: I know he was in the whole mess.

Q. Mr. Causey was there, too, wasn't he?

A. Yes.

Q. Did Causey strike him?

A. No.

Q. Who struck him?

A. C. L. Brown.

Q. Where did he strike him?

A. I couldn't tell you. It was dark.

Q. How do you know he struck him?

A. I saw him make a pass at him.

Q. And Merrill went down?

1255 A. Merrill went over the barricade and down in the ditch.

Q. What did they do?

A. Who?

Q. These men.

A. There was only one man.

Q. Where was Causey?

A. Down at the picket line at the head of the lane.

Q. When did he come up?

A. He wasn't there.

Q. They picked him up?

A. At the entrance of the lane.

Q. They picked up Merrill?

A. Yes.

Q. Merrill was trying to get away?

A. I don't know what he was trying to do.

Q. He didn't have anything in his hands?

A. He had his fists doubled up and his arms going.

Q. How many men were chasing him at the time he had his fists—

A. No one was chasing him.

Q. You were there; Causey was there, and Todd. Anybody else?

A. C. L. Brown.

Q. Who else?

A. Walter Kohtz was there.

Q. Where was Walter Kohtz standing when this man rabbited out of the car?

A. He stepped aside.

Q. He didn't hit him, either, did he?

A. Not that I could see. They made a pass at each other.

Q. When Mr. Todd testified yesterday Kohtz hit him, he was mistaken?

1256 Mr. Knoblock: I object.

The Court: Objection sustained.

Q. Was Carl Roskamp there?

A. No, sir.

Q. And how far, now, was Mr. Merrill from Thompson's car when you saw these men pick him up?

A. Oh, I would say about—possibly a hundred feet, but I was over there at the entrance of the lane when they picked him up. I wasn't standing by the car when they picked him up.

Q. You saw him a hundred feet from the car when they picked him up?

A. I didn't say that.

Q. What did you say?

A. I said I walked to the entrance of the lane.

Q. How far from the car was he when they picked him up?

A. A hundred feet.

Mr. Knoblock: He said a hundred feet.

Q. Was he in a direction toward you?

A. I was standing at the lane. I didn't pay much attention.

Q. Was he near you at that time?

A. Oh, possibly twenty feet.

Q. Who picked him up?

A. W. E. Causey.

Q. When he picked him up, what did he do with him?

A. He helped him over to Thompson's car.

Q. He needed help to get over there?

A. He walked him there.

Q. He needed help?

A. I imagine he did. When he went in the ditch, he rammed his head on the culvert.

1257 Q. He had his glasses broken in the melee around there?

A. I couldn't say.

Q. His face was bleeding, wasn't it?

A. Not when I saw him. I didn't take a look at him.

Q. Did you recognize Thompson's car when he came up there that evening?

A. I didn't know whose car it was until after I saw Herschel drive by and I saw he was in the car.

Q. And you recognized Herschel?

A. Yes.

Q. Did you recognize anybody in the back seat?

A. There was no one in the back seat apparently.

Q. You were one of the men that was arrested by the East Peoria police on the charge of beating this man, were you not?

A. I was.

Q. And gave bond over in East Peoria?

A. Yes, sir.

Q. Now, you saw Mr. Sund come in the alley that night, December 30, the same night that Merrill got his beating?

Mr. Knoblock: I object to that. That is the absolute issue, whether Merrill got any beating.

Mr. Heyl: There isn't much question.

Mr. Knoblock: There isn't much question if you believe your testimony.

The Court: Objection sustained.

Q. It is the same night the Merrill incident occurred you saw Sund in there?

A. I saw Sund coming out.

Q. And you say the men (you meant by that the 1258 strikers) ganged up around his car?

A. They didn't gang up. They casually walked to his car. He stopped of his own accord.

Q. In direct examination you stated to this court under oath you saw these men ganged around his car.

A. They were around his car.

Q. Didn't you say that?

A. If you want to call it "ganging."

Q. Didn't you called it "ganging" in your direct examination?

A. Possibly I did.

Q. You were a little offguard then?

Mr. Knoblock: I object.

The Court: Objection sustained.

You thought they were going to turn the car over? Is that what you thought?

A. I don't know what I thought about it.

Q. Why did you tell the court on direct examination you thought they were going to turn the car over?

A. I didn't say they were going to. I said it looked like they might.

Q. They rushed over and grabbed hold of the car?

A. They weren't in any hurry.

Mr. Knoblock: Objection.

The Court: He answered.

Q. They just walked over casually?

A. Yes.

Q. And because you saw some men walk over casually to this car, you thought they were going to turn it over?

A. I don't know.

1259 Q. Why did you tell the court on direct examination you thought they were going to turn the car over?

Mr. Knoblock: I object.

The Court: He said they might.

(Preceding question and answer read by reporter.)

Q. You had to intercede for him, didn't you?

A. Not necessarily. Carl is a friend of mine, and I walked over and was going to talk to him.

Q. Didn't you tell the court on direct examination, in direct answer to a specific question by Mr. Knoblock, you interceded for Mr. Sund?

A. If you want to put it that way. I just walked over to talk to him. We have been talking to all of the employees going in and out.

Q. Isn't it a fact you testified on direct examination you interceded for Mr. Sund?

A. No.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

The Court: By request, it has been suggested we take a recess at this time until 1:30.

Trial Recessed at 12 o'clock noon.

Trial Resumed at 2 o'clock P. M.

1260. **BLANCHE GABBERT**; called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Knoblock.*

Q. State your name.

A. Blanche Gabbert.

Q. What is your husband's name?

A. Clarence S. Gabbert.

Q. Is he one of the defendants in this case?

A. He is.

Q. On December 31, 1941, where was he in the morning?

A. He was home.

Mr. Elliott: I object to this witness testifying.

It is my understanding she has been in the court room a part of the hearing.

Mr. Knoblock: That is true, but we didn't know Mr. Gabbert would be placed in a certain spot at a certain time.

The Court: What is it? An alibi you are trying to prove?

Mr. Knoblock: Well, he was home there with her,—

Mr. Elliott: That is an alibi.

Mr. Knoblock: —and he was placed at that point.

The Court: Is that all you want to prove?

Mr. Knoblock: That is all.

The Court: I think I will overrule the objection.

Q. On the morning of December 31, 1941, where was your husband?

A. My husband was home.

1261 Q. Up until what time?

A. Up until 11 o'clock.

Q. And do you know where he went, and with whom?

A. Yes, I took him down to the Jefferson Hotel and let him out in front of the hotel at ten minutes of 11.

Q. Had he been away from your home that morning on any occasion?

A. He did picket duty the night before between 11 and 7, and he came home at 7:30 and stayed at home until I took him to the hotel.

*Cross-Examination by Mr. Heyl.*

Q. And did you hear your husband testify to this same thing in this court?

A. Yes, I did.

Mr. Heyl: I move to exclude this testimony on the ground I moved for the exclusion of the testimony of other witnesses. She has been in the court room all the time.

The Court: Yes, that's true. It puts me in rather an embarrassing position, but I am going to let it stand.

Mr. Heyl: That's all.

Mr. Knoblock: That's all, Mrs. Gabbert.

1262 LEO C. TOTTEN, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Knoblock.*

Q. State your name.

A. Leo C. Totten.

Q. Are you one of the defendants in this case?

A. I am.

Q. Directing your attention to the morning of January 2, 1942, I will ask you where you were at approximately 8 A. M.

A. I imagine about at the depot. I don't know for sure at that time.

Q. Where did you go from to the depot?

A. I went from the Jefferson Hotel.

Q. And about what time did you arrive at the depot?

A. Well, near 8 o'clock. I think I was at the hotel until possibly 8, and then I went to the depot.

Q. Whom did you meet down— Is that the Union Depot you refer to?

A. Yes, sir.

Q. Whom did you meet there?

A. I went down. I talked to Dave Gibbons (he was on picket duty there), and then, when I got ready to leave the depot, just as I started to drive away, Lucas came out and got in my car.

Q. Where did you and he go?

A. Down South Washington Street.



Q. How far south on that road did you go?

A. Somewhere in the vicinity of Hollis.

Q. And what did you do there?

A. Turned around and started back.

1263 Q. How far back did you come?

A. Well, we came all the way back, but we stopped—It's about a half mile, I imagine, south of the Allied Mills.

Q. And when you stopped there, what happened? Just tell what occurred there.

A. Well, we were trying to see who was on this train that went west and, when we saw the train coming, we just pulled over to the side of the road and tried to observe who it was.

Q. Did you get out of your car?

A. Yes.

Q. Did Lucas?

A. Yes, he got out on the right side.

Q. How far did he get away from your car?

A. Well, he just stood by the door of the car.

Q. Did he get as much as fifteen or twenty feet away?

A. No, he couldn't.

Q. Ten feet?

A. No, we was too close to a guard rail there.

Q. Was Mr. Lucas within your full view and vision at all times—

A. Yes, sir.

Q. —while he was standing there?

A. Yes, sir.

Q. Did you on that occasion see Frank Lucas throw any benzine or inflammable fluid of any kind or character at this engine?

A. No, sir.

Q. Did he throw anything on that occasion?

A. No, sir.

Q. How long did you remain stopped there?

A. We weren't there only just momentarily. I  
1264 don't think we were there longer than until the engine went on.

Q. Did you see Frank Lucas slap his knees and laugh?

A. No, sir.

Q. Were you observing him at all times?

A. Yes, I was watching out the right side of the car as the engine went by.

Q. After Mr. Lucas got in the car, then where did you go?

A. We came to Peoria.

Q. What, if anything, occurred there?

A. Well, just before we got to Western Avenue, oh, for possibly a block somebody kept honking at us from behind, and so finally, as soon as traffic was so we could, I pulled over to the side, thinking it was somebody that knew me.

Q. About how far were you from Western Avenue when you stopped?

A. Oh, I imagine it was about halfway between Western Avenue and Easton Avenue.

Q. When you stopped, what occurred?

A. Kipling pulled up alongside the car, and told me to stop.

Q. Is that the Harold E. Kipling who has testified in this court—

A. Yes, sir.

Q. —on behalf of the plaintiff?

A. Yes, sir.

Q. After you stopped, what did Kipling do?

A. He jumped out of the car and pointed a gun at Frank Lucas, and told him to say his prayers, he was going to kill him.

Q. How was he holding the gun?

A. Up, aiming it at him.

Q. How far was he from Lucas when he did that?

A. It was at my side of the car, right up against the glass.

1265 Q. Did he say anything else to Frank Lucas?

A. That he would kill him. He repeated that several times, I don't know how many, and then he walked around to the right side of the car and repeated it several times, and then he came around and threatened me with the same thing.

Q. What did he say to you?

A. He told me he was going to kill me, too.

Q. Did you hear him say anything else down there?

A. I think possibly two or three times he hollered for somebody to call the police.

Q. Was there a street car that arrived later?

A. There was a street car to the north of us, and I believe one to the back of us. I am not sure of that.

Q. Did you hear Mr. Kipling have a conversation with one of those cars?

A. The one going south.

Q. What, if anything, was said there?

A. Well, I didn't hear the conversation very well, but he said something to him about he would stay there until he got ready to go, or words to that effect.

Q. Did either one of you men get out of the car down there until the police arrived?

A. No, sir.

Q. Why didn't you?

Mr. Heyl: Objected to as asking for a conclusion.

The Court: Yes, objection sustained.

Q. What was Mr. Kipling doing with his right hand while he held that gun, if anything?

A. He kept slipping something on top of the gun, 1266 kept moving a lever up on top of the gun, or near the top, and kept sighting it directly at Lucas's head, and a couple of times at my head.

Q. About how long did you remain there under those conditions?

A. I would hate to say; I don't know. It seemed like a long while.

Q. Did you observe a squad car go by while you were sitting there?

A. There was a police car came to Western Avenue and turned down Western, and went out Western toward Adams again. I think it was the county police. I am not sure. He had the gun in his right hand, and kept giving them the sign to come up here. They evidently didn't see him, or had business elsewhere.

Q. They didn't come back?

A. No, they did not.

Q. Later on did police officers from the City of Peoria arrive?

A. There was two plain clothes men come down and got us.

Q. And they took you to the City Hall?

A. Yes, sir.

Q. Now, referring your attention to the date of December 31, 1941, when it is alleged that— Did you see Mr. Kipling out there near or about a half mile south of the Allied Mills where you had stopped?

A. No, I didn't.

Q. Now, with reference to December 31, 1941, in regard

to a switch engine near the intersection of Franklin and Washington Streets in East Peoria, were you in the court room when some witnesses for the plaintiff stated they saw you there?

A. Yes, sir.

Q. Do you know who that witness was?

A. I don't know whether it was Carroll Payne or that special agent, Thompson.

1267 Q. Did you arrive before, during or after that incident?

A. I arrived there during, I guess you would say. The engine was standing there, and there was quite a crowd around.

Q. Was there anybody around the locomotive at that time?

A. There was two people that I knew. Carroll Payne was walking up to the engine, and Thompson was standing by the engine.

Q. Had Carroll Payne arrived there before or after you?

A. Well, we only stopped just momentarily. The state police told us to move on.

Q. Was Carroll Payne there when you first arrived? Did you see him?

A. Well, I just don't know. I remember seeing him.

Q. Did you see anybody around the engine cab there?

A. No, I didn't.

Q. Did you see anything going on unusual when you arrived?

A. No, just a crowd around there was all.

Q. How long did you remain there?

A. We just barely stopped. None of us got out of the car.

Q. On that occasion did you throw any rocks or missiles or any object of any kind or character at that switch engine?

A. No, sir.

Q. Did you threaten anybody in any manner or form on that occasion?

A. No, sir.

Q. Did you get out of your automobile there?

A. No, sir.

Q. With reference to any statements made to you or to any other individuals in meetings, do you recall whether

any statements were made to you by either Mr. Coyle or Mr. Keiser with reference to violence during this strike?

A. Yes, sir.

1268 Q. What were those statements?

A. They made them to all of us: No violence.

Mr. Knoblock: I think you may cross-examine.

*Cross-Examination by Mr. Heyl.*

Q. When was it that Coyle and Keiser told you "no violence"?

A. They have told us that numerous times in meetings.

Q. When was the last time they told you before January 2, 1942?

A. Well, I just couldn't say, but it has been repeated several times.

Q. They told you that the night before, didn't they?

A. I am not sure.

Q. What were your men throwing stones at the trains for if they were told not to?

A. I don't know.

Q. Did you see anyone throwing stones at a train?

A. No, sir.

Q. You are now testifying under oath—

A. I am.

Q. —that you never saw anyone throw a stone at an engine or train of the T. P. & W. while this strike was on,—

A. That's right.

Q. —is that correct?

A. That's correct.

Q. Did you see any windows broken on the trains or engine cabs or the cabooses?

A. I saw some windows broken in that switch engine, yes, sir.

Q. Do you know how they got broken?

A. No, I don't.

Q. You didn't think the birds flew in there and  
1269 knocked them out, did you?

A. Well, I didn't know.

Q. Why was it that you kept your motor running when Mr. Lucas got out of the car when you saw this train approaching?

A. I was standing partly on the slab.

Q. You were in the car?

A. Yes, sir, I was.

Q. And you had your motor running?

A. Yes, sir.

Q. And he had the door open?

A. That's right.

Q. As soon as he stepped in the car, you started to Peoria?

A. When he got in, we went on.

Q. You started at a rapid rate of speed?

A. No.

Q. Did you see Mr. Kipling follows you?

A. No, sir, I did not.

Q. Did you say anything to him when he stopped you and arrested you—

A. No.

Q. —as to why he was doing it?

A. I started to say something to him, and Lucas told me to keep still.

Q. Lucas thought it would be better if you didn't make any statements?

A. I think possibly it was better that I did keep still.

Q. Now,—

Mr. Knoblock: Let him finish.

Mr. Heyl: He finished.

1270 Mr. Knoblock: I want that finished.

The Court: He answered.

(Question and answer read by reporter.)

Q. Because you might incriminate yourself if you said anything?

A. I don't think so.

Q. You hadn't done anything that morning, and were arrested in broad daylight on Adams Street, a public street?

A. That's right.

Q. And taken to the City Hall?

A. That's correct.

Q. And you never asked a single soul until you got to the City Hall why you were taken there?

A. I was afraid to.

Q. Ask who?

A. Kipling.

Q. You were taken to the City Hall?

A. Yes, sir.

The Court: Kipling didn't take you to the City Hall? No! Let's go ahead.

(Question and answer read by reporter.)



Q. You were taken to the City Hall by the two police officers?

A. That's right.

Q. You didn't ask either one of them why you were being taken?

A. No, sir, I didn't figure they knew.

Q. And they didn't tell you?

A. No.

Q. And you didn't know why you were arrested?

A. Yes.

Q. And the reason was because you and Lucas  
1271 concocted a scheme to throw something at the train  
to burn the train or injure someone on it?

A. No, sir.

Q. And that is the only purpose you had to go?

A. No, sir.

Q. What was it?

A. The purpose was to see who was on the crew.

Q. You were at the station?

A. Yes, sir.

Q. And you could see the train?

A. I did see it.

Q. And you could tell who was on the train?

A. No, sir, I couldn't.

Q. And you thought it would be better to go on the road  
while the train was going fast to try and see?

A. No, I didn't. I wanted to see who was on that train.

Q. The only reason you had to go to Hollis was to see  
who was on the train?

A. Yes.

Q. And you saw the train at the Union Station?

A. Yes, sir.

Q. And you went clear to Hollis to find out?

A. Yes, sir.

Q. And then you came back to Peoria?

A. I did.

Q. Did you find who was on the train?

A. No.

Q. And after the bottle was thrown you didn't see?

A. No, I didn't.

1272 Q. Didn't the bottle go through the window?

A. I couldn't tell you. I didn't see the bottle.

Q. Was anybody throwing rocks at the train?

A. I didn't see anybody.

Q. You didn't see a bottle?

A. No, I didn't.

Q. Did you see the little boy coming down the road walking to the grocery store about that time?

A. No, I didn't.

Q. I want to know if you saw anybody at any time that morning along the right-of-way.

A. No, I don't remember seeing anybody.

Q. You and Mr. Lucas were the only ones trying to find out who was on that train?

Mr. Knoblock: I object.

The Court: Sustained.

Mr. Knoblock: Argumentative.

The Court: Sustained.

Q. Were there any persons near you on that side of the right-of-way?

A. Not that I saw.

Q. That you saw?

A. Nobody.

Q. Anybody over on the other side of the track?

A. I didn't see anybody.

Q. Were you trying to see yourself who was on the train?

A. Yes, sir.

Q. You were making an effort to?

A. Yes.

Q. You couldn't see the automobile from where  
1273 you were sitting in your automobile? The train, I mean.

A. Yes, I could.

Q. And the engine was eight feet below where you were?

A. You could still see the engine.

Q. You were on the left side of the car, weren't you?

A. Yes, sir.

Q. I will ask you to look at the photograph that has been marked "Plaintiff's Exhibit 7", and state if that is the guard rail that you were parked near at the time you say you were trying to find out who was on the train.

A. There is a guard rail like this where we were, and it looks like it possibly.

Q. Look at the picture marked "Plaintiff's Exhibit 5", and see if that helps you any.

A. No, I don't believe it would (examining same).

Q. Is that the guard rail?

A. This one here looks something like the guard rail.

Q. You are pointing to Plaintiff's Exhibit 5?

A. Yes.

Q. That guard rail that appears on the right hand side of the picture, Plaintiff's Exhibit 5?

A. We were along by the guard rail, but I don't know just where.

Q. That is where you saw the engine pass, is it?

A. That's right.

Q. It wasn't four or five blocks below the Elm Grove Tavern, was it, where you saw it pass?

A. No, I don't think so.

Q. Did you see Dilley there?

A. No, sir, I didn't.

1274 Q. You didn't see him at all?

A. No, sir.

Q. Did you hear anything on that train?

A. Nothing but the left blow-off cock was open when they went by us.

Q. That is on the opposite side?

A. That's right.

Q. That is all you heard?

A. That is right.

Q. Did you hear any shooting?

A. No.

Q. Didn't hear any rocks or bricks?

A. No, sir.

Q. Your hearing is good, is it?

A. Yes, sir.

Q. You didn't get out of the car at all, as I understand it.

A. No, sir.

Q. You were back of the wheel?

A. Yes, sir.

Q. Now, on the 31st day of December, 1941, which was the day before New Year's, you say you were over at the east end of the Peoria bridge on West Washington Street, is that correct?

A. Is that the date the switch engine was there?

Q. That is the day you testified to, and I am asking you.

A. I was over there the day the switch engine was there.

Q. Do you know who the engineer on that train at that time was?

A. No, sir, there was nobody on.

Q. Did you see the engineer?

A. There was no one on that I saw, anyway.

Q. Did you see anyone being chased?

1275 A. No, sir.

Q. Where were you stopped?

A. Right along by the pilot of the engine.

Q. On Washington Street?

A. On Route 24.

Q. Were you on the street or on the shoulder?

A. Partly on the street, and the state police came there and told me to move on.

Q. Who was with you?

A. There was H. O. Todd and Hustler Wilson.

Q. Anyone else?

A. That's all.

Q. Did you see any strikers there?

A. No, I didn't.

Q. Any other strikers?

A. I don't believe I did.

Q. None at all?

A. No.

Q. Where did you come from before you stopped there?

A. I came from the Union Depot; just got my check that day.

Q. You were getting your check the same day? Did you cash it that day?

A. No, sir.

Q. You didn't cash it that day?

A. No, sir.

Q. That is where you were before?

A. I was up and turned in my company property, and got my check.

Q. What time did you do that?

A. I couldn't tell you the exact hour, but it was  
1276 sometime in the afternoon possibly around 2:30, 2:45 or 3 o'clock.

Q. Did you stop and wait for this engine?

A. No, the engine was there before we got there.

Q. All of you that got your checks cashed that afternoon got back to see that engine?

A. I didn't get it cashed; just got it from the depot.

Q. You had gotten it at the depot, and the others that were over there had gotten their checks?

A. H. O. Todd is the only one that I knew got his check.

Q. And you were all getting your checks so you would be here when this engine was stopped?

A. I didn't know that.

Q. Were there any pickets around there?

A. No.

Q. Did it just stop because it ran out of steam?

A. I don't know.

Q. Why was it stopped?

A. I don't know.

Q. Did you hear what was done to the engine?

A. Yes, sir.

Mr. Knoblock: I object.

The Court: He has answered.

Q. Did you observe the windows were broken out of the engine cab?

A. They were on the right side.

Q. Did you see any rocks around there?

A. No, I didn't.

Q. See anyone on the engine?

A. No, sir.

Q. Where were you going?

1277 A. Going over to East Peoria. I was going over to get my watch fixed. I intended to go out Washington Street, and I saw the engine and drove out 24.

Q. Anyone else stopped around there?

A. There was a lot of cars and a lot of people around there.

Q. The traffic officers complained of you and the other strikers in their cars, and told you to move on?

A. I was the only one that was moved.

Q. Did you see anyone throw a ball bat through a car?

A. I didn't see that.

Q. Your eyesight is good, is it?

A. Yes, sir.

Q. Where—Were you there when Mr. McNear got there?

A. No, sir, I wasn't.

Q. You didn't see that?

A. No, sir.

Q. You didn't see any of the East Peoria police there, did you?

A. No, sir.

Q. When you were arrested by Mr. Kipling, you say he came around on your side of his car?

A. He got out of his car on my side.

Q. And walked around the front of the car?

A. No, he stood there on my side, and pointed the gun at Lucas.

Q. What?

A. He pointed the gun at Lucas, and finally walked around on my side.

Q. Have you known Mr. Kipling?

A. I have known him for years.

Q. And you are friendly with him?

1278 A. I always have been.

Q. And Lucas always—

A. I am not so sure of that.

Q. And you were friendly with him?

A. Yes, sir.

Q. And you had a speaking acquaintance with him?

A. Yes.

Q. And you didn't say, "Kip, what are you stopping us for?"

A. I was afraid to.

Q. You were afraid you would get harmed?

A. No, sir.

Q. That is why you didn't ask anybody why you were being arrested?

A. Yes, sir.

Q. And it was broad daylight, and you hadn't done anything?

A. That's right.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

1279 WALTER F. KOHTZ, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Knoblock.*

Q. State your name.

A. Walter F. Kohtz.

Q. Are you one of the defendants in this case?

A. I am.

Q. Drawing your attention to the evening of December 30, 1941, around 5:30 to 6 P. M., I will ask you if you were at the head of the lane leading to the yards of the plaintiff's property on Route number 24.

A. I was.

Q. I will ask you if you can recall seeing the car driven by Herschel Thompson, one of the special agents of plain-



tiff, coming north on that road and proceeding on to the hard road that evening.

A. I did.

Q. What occurred there?

A. Well, he come out of there at a rather rapid rate of speed and disregarded the "Stop" sign at the state route, proceeded out onto the hard road, which was covered with snow and ice, and attempted to make a left-hand turn toward East Peoria, and this car going east—truck, rather—come down the road, and they had some kind of a collision there, striking the Thompson car on the left hand door, and then the car went to the side of the road, the north side of the road, and the truck was stopped somewhere near in the center of the hard road.

1280 Q. What was done to the truck, if anything?

A. I didn't notice any damage on the truck.

Q. After the two cars came to a stop, did you see where Mr. Thompson went?

A. As I recall it, he went back down to where the truck driver was.

Q. What occurred after that with reference to the Thompson car?

A. Well, there was some fellows went over to the Thompson car, including myself, to see what the extent of the damage was that had been done. We seen it hit the door, and there was glass flew and, as I got over there, somebody jumped out of the car in a big leap. There was a commotion there of some kind, and this fellow that jumped out of the car took a swing at me, and I side-stepped him.

Q. Did you hit him at all at that time?

A. I did not.

Q. What direction did that man go in?

A. He went in a southerly direction toward the other side of the highway.

Q. What happened over there, if you saw what happened?

A. There was some kind of a scuffle with someone else. I didn't know who was involved. I walked over that way, and the last I seen was somebody down in the ditch.

Q. Was more than one person down in the ditch?

A. One is all I saw at that time.

Q. Did—You didn't see anyone else down there later, did you?

A. No, I didn't.

Q. Do you know who helped this man out of the ditch?

A. W. E. Causey.

Q. How far was Mr. Causey away from you when  
1281 this man jumped out of the car, if you know? Do  
you know where he was?

A. Beg your pardon?

Q. Where was Mr. Causey, if you know, when this man  
jumped out of this car?

A. He was somewhere in the vicinity of the fire there,  
right on the culvert.

Q. About how far was that from this automobile?

A. I would say about a hundred feet.

Q. Did you see this man come up out of the ditch?

A. I did.

Q. Did you see Causey there?

A. I did.

Q. What happened?

A. Well, it was slippery there on the bank of the ditch  
on account of snow and ice, and he got him by the arm,  
and there was a car there, and this fellow got in the car  
apparently.

Q. Did you observe Mr. Causey at that time, or any  
other time, strike him with his fist or with any missile of  
any kind or character?

A. I did not.

Q. Did you strike this man or use force upon him in  
any other way on that occasion?

A. I didn't do more than sidestep out of the way when  
he swung at me.

Q. Did you swing at him?

A. I did not.

Q. Now, directing your attention to January 2, 1942,  
I believe either Mr. Gulick or Mr. Funk, two witnesses for  
the plaintiff, testified that they saw you standing  
1282 near the Star Model Brewery in Peoria at the time

Mr. Funk was hit in the chest by a piece of slag. I  
will ask you if you were there.

A. I was not.

Q. Were you in the vicinity of that place on that oc-  
casion?

A. I was not.

Q. Are those the only two occasions you have heard  
yourself mentioned by witnesses of the plaintiff?

A. One other occasion.

Q. Where was that?

A: That was at the Jap Davis crossing on that same morning.

Q: Were you there?

A: I was.

Q: Were there any acts of violence or stone throwing of any kind or character on that occasion?

A: There was not.

Mr. Knoblock: You may cross examine.

*Cross-Examination by Mr. Heyl.*

Q: Were you down south or west of the Allied Mills on January 2, 1942?

A: I was not.

Q: You weren't there?

A: I wasn't there.

Q: You weren't at the switch at the Allied Mills—

A: I was not.

Q: —as testified to by five witnesses in this case?

Mr. Knoblock: I object to that.

The Court: Objection sustained.

Mr. Heyl: I thought maybe I could refresh his  
1283 recollection if I called his attention to the fact five  
witnesses testified.

Mr. Knoblock: They did not.

The Court: Objection sustained.

Q: You weren't there?

A: I was not.

Q: Did you ever see a stone thrown at any of these  
trains?

A: I did not.

Q: Or brick bats?

A: No, sir.

Q: Did you ever see any window broken out of the  
cabs or cabooses?

A: I saw windows that were broken, but I hadn't saw  
them broken out.

Q: Do you have any idea how they were broken?

A: I don't know.

Mr. Knoblock: I object.

The Court: He said he didn't know.

Q: There weren't any hail storms during that period?

Mr. Knoblock: I object.

The Court: Objection sustained.

Q. You were at the intersection of this lane and 24 on the evening of December 30?

A. That's right.

Q. Where were you when Thompson came out?

A. If I remember right around, right around, that little salamander where that fire was.

Q. You were in the middle of the lane?

A. No, sir, that is to the left hand side of the lane.

Q. There were quite a number of men there at that time?

A. Not so many.

1284 Q. How many?

A. I would say four or five.

Q. What were their names?

A. I don't know other than Mr. Causey and this McMullen was there. I didn't know what his name was at that time, never knew the man.

Q. Was he working for the T. P. & W.?

A. Yes, sir.

Q. Was H. O. Todd there?

A. I don't know Mr. Todd.

Q. He walked up to the car with you and Walter McMullen?

A. No, sir.

Q. Did you run?

A. No, sir.

Q. How far did you go from the place where the collision occurred to find the car?

A. I would say that was around eighty feet.

Q. And you were interested in finding out how badly the car was injured, were you?

A. That was my first thought.

Q. Is that what you were interested in? Not your first thought, but what were you interested in?

A. Wanted to see what damage was done to the car.

Q. Did you open the door?

A. No, sir.

Q. How did it get open?

A. I don't know.

Q. Walter McMullen opened it?

A. That is what was testified.

1285 Q. Didn't you see it?

A. No, sir.

Q. You stood right there?

A. I come up afterwards.

Q. You came up after the door was open?

A. Yes, the door was already open.

Q. You heard Mr. McMullen say he opened this door, and the man came out like a rabbit?

A. That's right.

Q. You didn't see him if you didn't get there until it happened.

A. I was in the center of the road.

Q. You were waiting for him?

A. What?

Q. You were one of the fellows waiting for him to get out of the car?

A. I wasn't waiting for anybody.

Q. Who was the first man that hit him?

A. I didn't see anybody.

Q. When he went across the road, did he go alone or did somebody help him?

A. He went alone.

Q. Did anybody follow him?

A. There was one or two fellows standing across the road.

Q. Were they interested in the damage to the automobile? Do you know?

A. I don't know.

Q. Will you tell me why these men were waiting for this man Merrill eighty feet from where the accident happened, and over a hundred feet from the picket line?

1286 Mr. Knoblock: I object. How could he tell?

The Court: I think he can tell where it was, his opinion.

Q. Did all of these men leave the picket line when this accident occurred?

A. I couldn't answer that.

Q. Didn't they all leave and go up after Merrill?

A. I couldn't answer that.

Q. Did you see the truck?

A. The truck that hit the Thompson car? I just saw it out in the middle of the hard road.

Q. You weren't interested in how much damage was done to that?

A. I didn't notice any outward damage done to it.

Q. You didn't go and look, either?

A. I did not.

Q. You went directly to the car that Merrill was in?

A. That's right.

Q. Did you know he was in that car?

A. I did not.

Q. You knew Thompson was the driver of the car, and he was a special agent?

A. I didn't know Mr. Thompson. I heard he was a special agent, but I didn't know the man.

Q. Did you see Mr. Merrill down on the ground?

A. I did.

Q. How did he happen to get down on the ground?

A. Well, there is a guard rail there along the highway. I would say it's about two foot high, and that run for about a block.

Q. Is that all you want to say about it?

1287 A. And I was on the center of the highway. As Merrill come out of this car, he struck at me and I sidestepped to one side, missing the blow; then he proceeded on across and what took place and how he got down in that ditch, I couldn't tell you.

Q. You just think he fell in there?

A. There was one or two men by this guard rail as I went to the Thompson car.

Q. That guard rail wasn't on the pavement, was it?

A. Yes, sir.

Q. It was down off the hard road?

A. Down to the side of it.

Q. How many men standing at the guard rail as this man went down?

Mr. Knoblock: I object.

The Court: He may answer.

A. One or two men there.

Q. How far from the Thompson car?

A. I would say about fifty feet.

Q. About fifty-feet on down the road?

A. Yes.

Q. That would be fifty feet from the place where the Thompson car stood?

A. Whatever the width of the hard road, that is what the distance was.

Q. Do you know the names of those men?

A. No, sir.

Q. Were they strikers?

A. I don't know.

Q. You wouldn't have any idea?

A. No.



1288 Q. Did you see what happened to these men when they picked Merrill up?

A. The strikers—the pickets, you mean?

Q. You almost said it. Yes, down at the guard rail.

A. There was a few standing right around the fire there.

Q. You don't know what happened to this man at the guard rail?

A. No, I don't.

Q. Did they come back to the picket line?

A. I couldn't say.

Q. You haven't any idea who they were?

A. No.

Q. Was Causey one of that group?

A. Causey was down at the fire where I was.

Q. He picked this man off of the ground?

A. He didn't pick him up. He helped him get up the side of the hill. It was slick there.

Q. This man was bleeding in the face, wasn't he?

A. I didn't notice.

Q. Didn't you look at him?

A. I didn't.

Q. Do you know what became of this man Merrill?

A. I don't know, other than what I heard. I heard he went down to the master mechanic's office.

Q. Who told you that?

A. I don't know.

Mr. Knoblock: I object to that.

The Court: Objection sustained.

Q. What was your interest in this strike, Mr. Kohtz?

A. Well, my interest was that my sympathies were with the men, as I was a former employee, too.

1289 Q. What have you been doing the last year?

A. Oh, a little bit of everything; trucking.

Q. What is that?

A. Trucking.

Q. Who is that for?

A. Myself.

Q. Do you run a truck?

A. Yes.

Q. When did you start to help in this strike?

A. The day after it was called.

Q. Who got you to start?

A. I volunteered.

Q. Whom did you volunteer to?

A. There was some fellows there at the viaduct. I drove in.

Q. You just joined?

A. That's right.

Q. And continued in the strike as one of the pickets or whatever there was to be done until this restraining order was issued?

A. I was driving the truck and hauling coal and wood and so forth.

Q. You were on the picket line?

A. Not necessarily, other than just a visitor.

Q. Were you on the picket line any day?

A. Several days.

Q. You were there at the head of the lane as a picket that night?

A. Not as a picket.

Q. When did you go there that night?

A. I was there most of the day.

Q. Just visiting around?

1290 A. Just visiting around, yes.

Q. About ten below zero that day, wasn't it?

A. I don't know what the temperature was.

Q. Pretty cold, wasn't it?

A. Pretty cold, yes.

Q. You were also at the viaduct visiting with the pickets, were you not?

A. Yes, I was.

Q. Did you see any trains go by there with windows broken?

A. No, I didn't.

Q. You saw trains go by?

A. I never paid no attention to the trains. There was Nickel Plate trains, and all kinds of trains.

Q. I am talking about T. P. & W. trains.

A. No.

Q. Were you looking for any T. P. & W. trains?

A. No.

Q. What were you doing on the picket line if you weren't watching for trains?

A. I was hauling coal and wood, as I said.

Q. Were you hauling coal when the man, Merrill, got hammered up?

A. I went up to see if there was any coal to be hauled.

Q. You were there all day?

Mr. Knoblock: I object.

The Court: Sustained.

Q. Were you there all day for that purpose?

A. I don't remember.

Q. The biggest part of the day? You stayed until Merrill's trouble?

A. Until the East Peoria police come up.

1291 Q. And they arrested you?

A. Yes.

Q. You gave bond?

A. Yes.

Q. Who signed your bond?

A. I don't know who it was.

Q. There were two fellows there?

A. Yes.

Q. Was it Keiser and Coyle?

A. No.

Q. Did you attend any of the meetings?

A. Jefferson Building.

Q. Jefferson Building or Hotel?

A. Hotel.

Q. Coyle and Keiser were there each time?

A. I never noticed whether they were or not.

Q. Did you ever see them there?

A. Yes, I have seen them there.

Mr. Heyl: That's all.

*Redirect Examination by Mr. Knoblock.*

Q. Did you ever hear Coyle and Keiser make any statements with reference to whether or not violence should be used on the picket line in this strike?

Mr. Heyl: I object as improper.

The Court: He may answer.

Mr. Heyl: They didn't say it out loud.

Mr. Knoblock: Will you stipulate that in this record?

1292 The Court: Answer the question.

Mr. Knoblock: Will you read the question?

(Question read by reporter.)

A. I did.

Q. Or at any other time? Violence at any other time? What was the statement?

A. They said, "No violence to be used." They stressed that very heavily.

The Court: Anything else?

Mr. Knoblock: Yes.

Q. After the strike was called, were you offered employment by the plaintiff in this case?

A. Yes.

Mr. Heyl: I move to strike that as a conclusion unless he states the name of the person.

Q. Who offered you the employment?

A. R. B. Green.

Q. Do you know what capacity he has over there?

A. Master mechanic.

Mr. Knoblock: That's all.

The Court: Is that all?

*Recross Examination by Mr. Heyl.*

Q. Did you ever hear them talk about any violence in these meetings? That violence had been done to these trains?

A. I never did.

Q. You never heard that?

A. Never did.

Q. You never heard there was any train that was stoned?

1293 A. No.

Q. Until you come into court, you never knew such a thing occurred?

A. I did not.

Q. What employment were you offered by Green?

A. He asked me if I wanted my former job back.

Q. What day was that?

A. That, I believe, was December 30.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

CARL ROSKAMP, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Knoblock.*

Q. State your name.

A. Carl Roskamp.

Q. Are you one of the defendants in this case?

A. Yes, sir.

Q. Directing your attention to the evening of December 30, 1941, I will ask you if you were present between 5:30 and 6 P. M., at the picket line—

A. I was not.

Q. Wait just a minute! —where the lane enters onto Route number 24 from the plaintiff's yards. Were you present there that evening?

A. No, sir.

Q. Were you around there at any time during the Merrill incident?

1294 A. No, sir.

Q. Have you been mentioned at any other places during—by the plaintiff's witnesses during this trial?

A. I have. Yes, I have.

Q. Where were they?

A. Down around the Franklin Street bridge.

Q. Were you present at any time when this switch engine at the intersection of Franklin and Washington was stoned on December 31 at approximately 3 or 3:30 P. M.?

A. No, sir.

Q. As a matter of fact, Mr. Roskamp, have you at any time anywhere or any place ever thrown any rocks, stones, bricks or missiles of any kind at any of the employees of the plaintiff or any of its private property?

A. I have not.

Q. Have you at any time or any place ever made any threat or malicious move toward any of the plaintiff's employees? Since the time this strike has been called, have you?

A. I have not.

*Cross-Examination by Mr. Heyl.*

Q. You never heard of any of the property of the T. P. & W. during this strike being damaged or injured in any way?

Mr. Knoblock: I object to that. That is not proper cross-examination.

The Court: I think he may answer.

A. I have not.

Mr. Knoblock: What he has heard—

1295 Q. And you never heard of it until you got into court and heard the testimony?

A. That's right.

Q. Do you know H. O. Todd?

A. Yes, sir.

Q. You heard his testimony this morning, didn't you?

A. I don't remember if I did or not. I don't remember if I was in the court.

Q. You remember him saying he saw you at the Merrill incident that night at the head of the lane?

A. No.

Mr. Knoblock: I object because that is absolutely, deliberately contrary to the record.

I will let the reporter read the record.

Q. You were at that corner that night?

The Court: Is the former question withdrawn?

Mr. Heyl: He has answered it. I thought he said "no".

The Court: Did you say no, you didn't hear him testify?

Mr. Heyl: That is correct.

Q. You say you were not there?

A. No, sir.

Q. Where were you that day?

A. At my place where I live in East Peoria.

Q. Were you arrested?

A. Beg pardon?

Q. Were you one of those arrested for this assault?

A. Yes, sir.

1296 Q. Where did they find you when they arrested you?

A. I went down to the City Hall.

Q. Where did they arrest you? Where did the officer come out for you?

A. No officer came out.

Q. How did you know a warrant was out for you?

A. Leo Totten told me Merrill had sworn out a warrant.

Q. Where do you live with reference to that place?

A. It's possibly three hundred feet down to the lane and to the west about two hundred and fifty feet.

Q. So you had about five hundred and fifty feet to walk after the assault on Merrill after you were there at the time, is that right?

A. I was not there.

Q. You were in your home all the time,—

A. Yes, sir.

Q. —is that right?

A. Yes.



Q. Did you tell Merrill, when you saw him at the City Hall, you weren't present when he was assaulted?

A. I didn't see Merrill.

Q. You haven't seen Merrill?

A. No.

Q. You haven't seen Merrill since?

A. No.

Q. Did you see Merrill at any time that night?

A. No, sir.

Q. Were you on the picket line at any time that day?

A. No, sir.

1297 Q. Or that night?

A. No, sir.

Q. Were you on the picket line any time?

A. I was on the morning of December 31 from 7 until 1, I believe.

Q. At what place?

A. At the head of the lane.

Mr. Knoblock: I object. We have only gone—

The Court: He may answer. He answered.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

HUSTLER WILSON, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Knoblock.*

Q. State your name.

A. Hustler Wilson.

Q. Are you one of the defendants in this case?

A. Yes, sir.

Q. Directing your attention to December 31, 1941, at 3:30 P. M., I will ask you if you heard this remark, or this in substance, made to Raymond Avery, "We are going to get rough. Stay off of engines and cabooses. You know what happened to that engine this afternoon"?

A. No, I didn't.

Q. Did you make any such remark to him, or hear 1298 anyone else make such a remark?

A. No, sir.

Mr. Heyl: I didn't hear the answer.

A. No.

Q. Directing your attention to December 31, 1941, at about 3:15 P. M., I believe one of the witnesses for the plaintiff, Carroll Payne, stated he saw you near the intersection of the crossing of Franklin and Washington Streets in the City of East Peoria. It was claimed that an engine was stoned. Were you there during any of the time that the stoning took place, or any of the acts herein complained of took place?

A. I was there afterward. I did see Payne. I went over there with Jack Totten and Todd.

Q. You were in the same car with Totten and Todd?

A. Yes, sir.

Q. Was anybody in the cab of the engine when you arrived there?

A. I didn't see anyone.

Q. Did you at that time, or have you at any time, ever thrown any rocks, stones or missiles of any kind or character at any of the individuals or employees of the plaintiff, or any of their private property?

A. No, sir.

Q. Have you at any time ever threatened anybody with bodily harm or injury of any kind or character?

A. No, sir.

Q. At any time?

A. No, sir.

Mr. Knoblock: You may cross examine.

1299

*Cross-Examination by Mr. Heyl.*

Q. Did you ever see the result of any stoning of the engine?

A. Well, I did see it; looked like the glass was knocked out of that switch engine there at Franklin on Route 24.

Q. Did you inquire to find out about what had been done?

Mr. Knoblock: I object to that.

The Court: I think he may answer that.

A. I can go back to the beginning where I got in the car with Totten and Todd at the Union Depot. They were going to East Peoria and I was going to the picket line, and we drove across the bridge and, when we drove by, there was a lot of people and this engine was standing there, and Thompson was standing there, and they stopped right around the pilot.

Q. Your car stopped?

A. The car stopped I was in, and it looked like the lights were knocked out of the cab, and Thompson was standing there and he started to walk over, and I saw Carroll Payne. He looked down from the rear of the engine or some place, and Thompson didn't come on, and the state police, they had us move on because it was blocking traffic there, a lot of cars and people around.

Q. Did you inquire to find out how that engine was damaged?

A. No, sir.

Q. Did you ever find out later?

A. I didn't.

Mr. Knoblock: I object.

The Court: He said he didn't. Is that correct?

A. Yes.

Q. You never heard how it was done?

A. No, sir.

1300 Q. And you have no idea?

A. No, sir.

Q. You were on your way to the picket line when this happened?

A. I don't know where I was when this happened.

Q. When you were over there and passed this engine, you were on the way to the picket line?

A. I was on the picket line, but I didn't see the engine until after it happened.

Q. You all got there after it happened, I understand that.

A. Yes.

Q. Were you the only strikers there at the time this happened?

A. I only saw Thompson and Payne.

Q. They weren't strikers?

A. No, sir.

Q. Did they have anything in their hands?

A. No, sir. Thompson started to come over, and he saw Payne and walked back.

Q. And you never saw Thompson or Payne have any guns in their hands?

A. No, sir.

Mr. Knoblock: I object.

The Court: Objection sustained.

Q. Anybody on this engine?

A. No, sir.

Q. You didn't see anybody?

A. No, sir.

Q. Did you see anybody around there?

A. A lot of people.

Q. Did you see the man that was knocked out off of that engine? That was hit with the end of a hose?

1301 A. No, sir.

Q. You didn't see that?

A. No, sir.

Q. Did you see the other man, the engineer, that was knocked out by some men?

A. No, sir.

Q. On December 31, 1941, about 3:20 P. M., you did have a conversation with Mr. Avery, did you not?

A. I did see Mr. Avery, yes, sir.

Q. Where was that?

A. Up at the end of the lane.

Q. End of the lane?

A. Yes, sir.

Q. And Mr. White was there, and Mr. McMullen was there?

A. I don't know who all was there.

Q. There was so many you can't remember?

A. There was quite a bunch there.

Q. How many were there?

A. Well, I wouldn't say.

Q. Did you have any talk with him about firing the engine?

A. Yes, sir, I asked him if he did.

Q. You asked him about that?

A. I asked him if he fired, and he said he didn't, said he was a pilot and he wasn't going to pilot any more.

Q. Now, you also talked to him, and told him, did you not, if he ever got on an engine or caboose again it was going to be too bad for himself and family?

A. No, sir, I did not.

Q. Did somebody say that?

A. No, sir.

1302 Q. Did anyone talk to him there?

A. Someone talked to him before I did.

Q. Someone said something before you came up?

A. Yes, sir, before I came up.

Q. You don't know what was said at that time?

A. No, sir.

Q. Where were you at that time?

A. I was standing up by the fire, and someone was

talking to him before I went down to where he was. He was just about four or five feet below me. I didn't know at the time who it was.

Q. Was John Feuger there?

A. I wouldn't say.

Q. What business was it to you if this man had been firing an engine?

Mr. Knoblock: I object to that.

The Court: He may answer.

A. Well, it was quite a lot of business.

Q. What was it?

A. That was our jobs.

Q. You left it, didn't you?

Mr. Knoblock: I object.

The Court: Objection sustained to that.

Q. You were mad about it, weren't you?

Mr. Knoblock: I object to that.

The Court: Objection sustained.

Q. Were you angry with him when you went out to talk with him?

A. I wasn't.

Q. And very friendly?

A. I was friendly.

1303 Q. And just laughed about it?

A. No, I wasn't laughing.

Q. You had just come from engine 70 about the time that this occurred? Just a little before this occurred, hadn't you?

A. Well, yes, sir, that was before.

Q. And you were the first one that came over to the picket line after you saw engine 70?

A. I couldn't say.

Q. Did you see anyone else there get there before you did?

A. Well, I don't know.

Q. Did you tell anybody that you saw the engine had some damage done to it?

A. Well, I don't remember saying anything like that, but I think one of their men did come up—not Carroll Payne or Giffords' clerk, whatever his name is. He came up there right after that, and said something about it.

Q. You got there before he did?

A. Yes, sir.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

1304 KNUT FELDT, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Knoblock.*

Q. State your name.

A. Knut Feldt. K-n-u-t F-e-l-d-t.

Q. Are you one of the defendants in this case?

A. No, sir.

Q. Directing your attention to December 29, 1941, on the occasion when William A. Grafelman came to your picket line by the freight house, did you observe Mr. Stetler speak to him at that time?

A. I seen Mr. Stetler go up to his car window, but I couldn't hear (I was too far away) what he said to him.

Q. Were you within hearing distance of what went on?

A. No.

Q. Did you make any statements of any kind or character to Mr. Grafelman at that time?

A. No, sir.

Q. Did you hear anyone else make any statements to him?

A. No, sir.

Q. Did you at that time throw anything, any rocks, stones or clubs or anything else of any kind or character, at Mr. Grafelman, or attempt to injure him in any way?

A. No, sir.

Q. Did you threaten him in any way?

A. No, sir.

Q. Is this the only occasion you have been mentioned in this case?

1305 A. Yes, sir.

Mr. Knoblock: You may cross-examine.

*Cross-Examination by Mr. Heyl.*

Q. You saw Grafelman turn his truck around and go out without going in the freight house after this man Stetler talked to him, did you not?

A. Yes, sir.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.



1306 ARTHUR BREWSTER, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Knoblock.*

Q. Will you please state your name?

A. Arthur Brewster.

Q. Are you one of the defendants in this case?

A. I am.

Q. Directing your attention to the morning of January 2, 1942, I will ask you who you were with on that morning.

A. John Gimming and—

Q. Did you meet anyone else that morning?

A. We did.

Q. Who was that? A man named Dilley?

A. Harold Dilley.

Q. Where did you meet Harold Dilley?

A. I think it was at the East Peoria—I will get straightened out here in a minute. Yes, we met him down there by the police station.

Q. And who was driving the car?

A. John Gimming.

Q. And, Mr. Brewster, where were you sitting in that car?

A. In the front seat, right side.

Q. And where was Mr. Dilley seated?

A. In the back seat.

Q. Where did you go from the East Peoria police station?

A. We took a drive over to Peoria.

Q. And who, if anybody, did you see at the Cedar 1307 Street or the street that has sometimes been called the Persimmon Street crossing?

A. We weren't at the Cedar Street crossing.

Q. What's that?

A. We were not at the Cedar Street crossing.

Q. At that Persimmon Street crossing did you see Harold Kipling?

A. Not at Persimmon Street.

Q. Where did you first see him?

A. Edmund Street.

Q. And on that occasion I will ask you if John Gim-

ming said this, or this in substance, to Harold Kipling: "They may go out on the west end, but they are not coming back. We have got enough to get them, and you, too?" Did you say anything like that, or did he?

A. I did not hear anything said like that.

Q. Were you in a position to hear anything like that if it was said?

A. I was sitting right beside him.

Q. After you left the Edmund Street crossing, where did you go from there?

A. I believe to the P. T. tower.

Q. Did you see Mr. Kipling there?

A. Yes, I believe I did.

Q. And where were you with reference to Kipling's car?

A. I think we were standing right in the middle of the street, and he was off to the west side.

Q. And from the P. T. tower where did you go to?

A. I believe to the Allied Mills.

Q. And did you see anybody there at the Allied Mills right in front of you?

1308 A. Kipling's car.

Q. Were you following his car?

A. We were.

Q. Where did you go from the Allied Mills?

A. To a point just a short distance west of the tavern there, the Elm Grove Tavern.

Q. I think that is considered north and south there. Which direction would you say it was?

A. I guess that's still a continuation of Adams Street, north and south. It would be south.

Q. South of the Elm Grove Tavern?

A. Yes.

Q. And whose car stopped right in front of you, if anybody?

A. Kipling's.

Q. Did you observe anyone on the south side of the road there on that occasion? On the east side of the road? On the river side of the road?

A. Yes, I seen a car there.

Q. Who was it?

A. Jack Totten's car.

Q. Who was with him?

A. Frank Lucas.

Q. Did you observe Totten's car there from the time you drove up until they pulled away?

A. Well, it pulled away shortly after we drove up.

Q. And did you see Jack Totten out of his car at any time?

A. I did not.

Q. Did you observe where Frank Lucas was standing there?

A. Right close to the front door.

1309 Q. And which side of the Totten car?

A. On the right side.

Q. Was Frank Lucas in your full view at all times?

A. He was.

Q. On that occasion did you see Frank Lucas throw any bottle of benzine or inflammable liquid of any kind or character?

A. I didn't see him throw anything.

Q. Did you observe him from the time you drove up there until they went away?

A. Yes, sir.

Q. Did you observe him at any time get away from the Totten car?

A. No, I didn't.

Q. Did you observe him at any time bend over and slap his knees and laugh?

A. No, sir, I surely did not.

Q. After the Totten car left, what, if anything, happened?

A. Well, shortly after they had left I heard shots and seen steam coming out on the right side.

Q. What happened then?

A. Dilley got out of the car and run across the road.

Q. What happened?

A. I seen him fall. Gimming and me went after him, picked him up and put him in the car.

Q. Then where did you take him?

A. Took him to, I guess you would call it, the Bartonville police station.

Q. From there where?

A. To the Proctor Hospital.

1310 Q. Do you recall some witnesses for the plaintiff stating that they saw you and another party piling up rocks some place?

A. Yes, I remember that.

Q. Do you remember what the witness's name was?

A. I believe it was Mr. Kipling. I am not sure.

Q. Where were you piling up those rocks?

A. At the head of the lane.

Q. What were you going to do with them?

A. I was getting some small rocks about an inch and a half thick and possibly three inches across out of the ditch to put under that can that had the fire in it.

Q. Did you at any time ever throw any rocks, bricks, clubs or missiles of any kind or character at any of the property of the plaintiff or any of its employees?

A. I have not.

Q. Have you at any time ever threatened them by making oral threats, by conversation or anything of that kind?

A. No, sir.

Q. Were you mentioned at any other places in this testimony here?

A. I don't think so. I haven't heard it.

Mr. Knoblock: You may cross examine.

*Cross-Examination by Mr. Heyl.*

Q. You were piling rocks at the Lake Erie crossing, too, weren't you?

A. Not that I know of.

Q. Isn't it the fact you gathered up a pile of rocks by the Lake Erie crossing?

A. No, sir.

Q. Do you tell the court that you and Gimming 1311 brought Ditley to the hospital?

A. Yes, sir.

Q. The fact of the matter is, someone else brought him to the hospital, and they met you afterwards?

A. They did not.

Q. Isn't that what you told the two officers there?

A. I didn't see any officers.

Q. Where did you park your car at the hospital?

A. On the south side of Second Street, I think you would call it.

Q. On Second Street.

A. Yes.

Q. And in front of which door?

A. Very nearly in front there.

Q. Did you throw anything out of the car after you came out of the hospital, and before you came up town?

A. I did not.

Q. Did you see that bunch of rocks that you dumped out of the car down at the hospital?

A. I have never seen that car before.

Q. Did you ever see that cloth taken out of John Gimming's car?

A. I never have.

Q. Didn't you see it that day?

A. I did not see it that day.

Mr. Heyl: I want these marked as exhibits.

The Court: Mark them now so there will be no trouble.

(Cloth marked "Plaintiff's Exhibit 32", and box of rocks, etc., marked "Plaintiff's Exhibit 33.")

1312 Q. Now, Mr. Brewster, you got into Totten's car in East Peoria?

A: I never was in Totten's car in my life.

Q. Weren't you in Totten's car the day before this incident down at Hollis?

A. No, sir, I was not.

Q. Whose car did you have?

A. I was in Gimming's car.

Q. The day before?

A. I was in no car the day before that I remember.

Q. Where were you the day before?

A. I don't recall now where I was the day before.

Q. You got into Gimming's car at the East Peoria police station? Is that what you say?

A. No, sir, I did not.

Q. Where did you get in?

A. I was with Gimming all night.

Q. Where did you stay all night?

A. On picket duty.

Q. Where?

A. On the east side of the dike in East Peoria on the hard road.

Q. Is that at the lane?

A. No, that's on the hard road 150.

Q. 150?

A. We were patrolling that.

Q. That is still east of the lane on Route 24?

A. That's on Route 150 east of the viaduct on south.

Q. You were there all night?

A. From 1 A. M. to 7.

Q. And then you got in his car, and started in which direction?

A. Oh, we drove around there after we come off duty.

1313 Q. Did you see train number 41 made up?

A. I did not.

Q. Did you see it pull out?

A. I did not.

Q. What were you driving down Washington Street for that morning?

A. Oh, we were just driving around. We heard there was a train coming out.

Q. You knew, then, there was a train?

A. We had heard after we come off picket duty there was.

Q. When did you hear there was going to be a train?

A. I don't remember the exact time.

Q. You heard it before you left East Peoria, didn't you?

A. No, we come over to Peoria.

Q. Where did you hear it after you got over to Peoria?

A. I don't just remember where it was.

Q. You stopped at the Union Station?

A. No, we weren't at the Union Station.

Q. You got Dilley there?

A. No.

Q. Where did you get Dilley?

A. East Peoria police station.

Q. Did you hear his testimony this morning?

A. I heard part of it.

Q. You got him at the police station?

A. Yes, close by the police station.

Q. After you got over to Peoria, why did you go down Washington Street?

A. I had heard a rumor Mr. Funk was conveying the trains through the yard.

1314 Q. Who?

A. Mr. Funk was piloting the trains through the "Q" yard, and I wanted to see whether he was or not.

Q. You could have seen that at the Union Station?

A. The train wasn't there.

Q. Where was the train?

A. I hadn't seen it until it got to Edmund Street.

Q. Did you see it at Edmund?



A. I did.

Q. Did you see who was on the train?

A. I did.

Q. Did you see Funk?

A. Yes.

Q. Who else?

A. I saw Kipling, and I wanted to talk with Mr. Funk when he got off the engine if it was so.

Q. Did you know he was going to get off the engine?

A. I presumed he would because I had heard that report, that he was just piloting the trains through the yard, and turned them over to the other engineer as soon as he got out.

Q. Did you say anything to Kipling down there?

A. I did not.

Q. You were close enough to say something, weren't you?

A. No, I couldn't very well talk to him there because the train was going over the crossing.

Q. You were within ten feet of his car, weren't you?

A. Well, I don't know just how close we were to his car.

Q. His car drove right up by your car, and the man driving your car put the window down?

1315 A. I don't know.

Q. And you saw Kipling within ten feet of that car?

A. I don't remember how far it was from him.

Q. You could have asked him then?

A. I don't talk to Kipling any more than I have to, never have.

Q. But you thought you would see where he got off his train, and then have a talk?

A. I wanted to talk to Funk, not Kipling.

Q. Did you tell Kipling you wanted to talk to Funk?

A. No, I didn't consider that any of his business.

Q. What did you want to talk to Funk about?

A. I wanted to ask him—I wanted to talk to him.

Q. About what?

A. Convoying those trains through there.

Q. He had been an employee of the railroad for many years?

A. Not so many.

Q. A longer number of years than you were?

A. Yes, I guess five or six years. I don't remember just exactly when he come there.

Q. Did you say anything to any of the officers of the company as to why he was conveying trains?

A. I have not.

Q. You weren't driving down Adams Street and on down to Hollis to find out who was on the train, were you?

A. I had found out, but I wanted to find out where he got off.

Q. You knew the train was a train that had its destination at Keokuk, didn't you?

A. No, I didn't know where they were going.

Q. You know that is where their trains run, don't you?

1316 A. They do sometimes, yes.

Q. So you stopped at the Hiram Walker crossing and saw Funk on the train?

A. Yes, sir.

Q. And anyone else that was there at the crossing near where you were could have seen Funk on the train?

A. I suppose, if they knew him.

Q. He was running the engine?

A. He was.

Q. At that time?

A. He was.

Q. You are sure of that, are you?

A. I am positive.

Q. You went down to the P. T. crossing or Iowa crossing, did you?

A. Yes, we did.

Q. Stop there again, did you?

A. Momentarily.

Q. And you were right up with Kipling, weren't you? Right near him?

A. Oh, probably twenty feet or so from him.

Q. Did you say anything to him?

A. Not to him.

Q. Did you see Funk there again?

A. Yes, I did.

Q. Then you went down to the M. & St. L. crossing, didn't you?

A. No.

Q. And then you drove on down to the crossing or, rather, the switch, at Allied Mills?

A. Yes, we were there.

Q. Stop there, did you?

1317 A. I believe for—

Q. You saw Funk there?

A. I did not.

Q. Did you tell anybody in connection with the train that you desired to talk with Funk?

A. I don't know how you would tell them.

Q. What's that?

A. I don't know how you would tell them that far away.

Q. They were switching, weren't they?

A. Setting out some cars, I believe.

Q. And you saw men on the ground?

A. Yes.

Q. And you saw Kipling there, didn't you?

A. I did.

Q. And his car was standing there?

A. It was.

Q. He got out and was directing the special agents with reference to what their duties were?

A. I did not see him get out of the car.

Q. You didn't?

A. No, I didn't.

Q. Did you see other men there from the train?

A. I seen some other men there.

Q. How close were you to Kipling?

A. Oh, we were probably parked as far as from here to you from his car.

Q. About ten feet?

A. About ten feet, I expect.

Q. Did you tell him you would like to speak to Funk?

1318 A. I never speak to Kipling.

Q. I am asking you if you did.

A. No.

Q. Have you ever talked to Kipling before?

A. Just on rare occasions.

Q. Were you frinedly?

A. I can't say I was.

Q. Were you unfriendly?

A. I can't say I was unfriendly.

Q. You did when it was necessary in your line of work?

A. My work didn't take me much in connection with Kipling.

Q. Did you tell anyone else to tell Funk you wanted to talk to him?

- A. I did not.
- Q. The train, after they put out ten cars, started west?
- A. I don't know how many cars they set out.
- Q. You waited until they got through switching, and then you went on?
- A. I waited until Kipling pulled away with his car.
- Q. The train had pulled out, too, hadn't it?
- A. I think it had all gone by.
- Q. And the train wasn't going very fast, was it?
- A. No, they were starting out.
- Q. Then you followed the train down to the point where you say you saw Mr. Totten and Mr. Lucas, is that right?
- A. Yes.
- Q. Were they there when you got there?
- A. Yes, they were.
- Q. Parked there?
- 1319 A. Yes, they were.
- Q. Did you go on or stop?
- A. Stop.
- Q. Where did you stop?
- A. Right behind Kipling's car.
- Q. Right behind Kipling's car?
- A. Yes, sir.
- Q. Kipling didn't stay there long, did he?
- A. I don't know how long Kipling stayed there.
- Q. You saw him take out after the other car, didn't you?
- A. I didn't see that.
- Q. You didn't?
- A. No.
- Q. Did you drive on by Lucas and Totten before you stopped?
- A. I don't recall as we did.
- Q. Did you see Mr. Lucas standing out as you drove by?
- A. As we come up there and stopped.
- Q. Did you stop on beyond west from him?
- A. Practically across the road, I believe.
- Q. Kipling was back of him, or to the west of him?
- A. I don't think he was.
- Q. Where was he? You stopped behind him? You can certainly tell us where he was.
- A. I think he was across the street on the slab from him.
- Q. Are you thinking that?
- A. Not what I think. That is what I really believe.
- Q. You don't know what happened to Kipling?

A. I don't know what happened to Kipling, no.

Q. What did you do after you stopped there?

1320 A. I still sat in the car.

Q. All the time?

A. All the time.

Q. Never got out?

A. Yes, I did get out.

Q. What did you do when you got out?

A. Went over and picked up Harold Dilley, or helped pick him up.

Q. Before you heard the shots and before you saw the steam and before you saw this man fall, Mr. Lucas and Mr. Totten had left the scene, hadn't they?

A. They left shortly after we got there.

Q. And before any of this happened?

A. After they had left a little while, when I heard shots and seen that steam.

Q. They had gone?

A. Yes.

Mr. Knoblock: He said that is true.

Q. Where was Kipling when you heard the steam?

A. Sitting in his car in front of us.

Q. He hadn't gone?

A. I am positive.

Q. Did you see any rocks hit the cab of the engine?

A. I did not.

Q. Did you see any glass broken out of the headlight?

A. When I seen him fall, I didn't pay any attention but to get him in the car and get going.

Q. Did you see the headlight or any part of the engine broken?

A. No, I did not.

Q. Did you see any flame in that cab?

1321 A. I did not.

Q. You didn't see that?

A. No, sir.

Q. Did you see any person throw anything at that train?

A. I did not see anyone.

Q. At any time?

A. No, sir.

Q. Will you tell me the names of the men that were there besides the one that was with you and Lucas and Totten and Kipling and Dilley?

A. I don't remember who was there.

Q. About twenty-five or thirty men there?

A. I didn't see that many.

Q. How many were there?

A. I couldn't tell you.

Q. Do you know why they all happened to be at that point at that time the engine passed?

A. I do not.

Q. You have no idea?

A. I do not.

Q. You discussed that the night before at the union meeting?

A. We did not.

Q. At no time?

A. At no time.

Q. Did you see anyone with Mr. Dilley besides the ones that you have mentioned?

A. I don't understand what you mean.

Mr. Heyl: I will withdraw the question.

Q. Did Mr. Dilley ride there with you?

1322 A. He did.

Q. And he got out of the car and went over to the bank?

A. When the steam and shots started coming.

Q. The shots were over before he left the car?

A. They were not.

Q. You heard him testify this morning?

A. I didn't hear all of his testimony.

Q. He had to run about fifty feet from your car to get over to the bank, didn't he?

A. I wouldn't say the slab is fifty feet wide.

Q. You were on the other side?

A. Just clear of the slab.

Q. I would like to have you look at this photograph which is marked "Plaintiff's Exhibit 6", and see if you can identify the place where your car was parked.

A. Not in that.

Q. What's that?

A. Not in that one.

Q. Can you fix the place by looking at Plaintiff's Exhibit 7?

A. No, I can't.

Q. Was it east or west of the end of the guard rail that's shown in Exhibit 7?

A. I don't remember seeing a guard rail.

Q. You remember stopping that morning on the way down at the Star Union Brewery crossing, do you not?



A. I did not stop there.

Q. Your car stopped there, didn't it?

A. I have never been to that place they talk of as the Star Union.

Q. Do you know where it is?

1323 A. I have passed there on the train several times, yes.

Q. You didn't stop there at all?

A. No, sir.

Q. How fast was this engine going after it left the Allied Mills switch, and before you saw Totten's car leave the road?

A. Oh, I suppose they were living up to that speed restriction, which is ten miles an hour.

Q. Then miles an hour? That is your judgment, is it?

A. That would be.

Q. The engine was much lower than the road, wasn't it?

A. Well, there's a cut through there.

Q. The edge of the pavement is about level with the window of the cab in the engine, isn't it?

A. I don't just recall just how the window comes along there with the slab.

Mr. Heyl: That's all.

The Court: Is that all with this witness?

Mr. Knoblock: Yes, that's all.

The Court: We will be at recess for about ten minutes.

(Recess.)

1324 SHELDON M. HARKLESS, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Knoblock.*

Q. Will you please state your name?

A. Sheldon M. Harkless.

Q. Where do you live, Mr. Harkless?

A. At 3123—

Q. Where do you live now?

A. 401 South Park Avenue.

Q. Where did you live on January 2, 1942?

A. 3123 South Adams.

Q. How long had you lived there?

A. About four years.

Q. Directing your attention to the morning of January 2, 1942, at about 9:30 A. M., I will ask you if your attention was drawn to anything out in the street.

A. Yes, sir.

Q. What caused your attention to be directed in that direction?

A. A lot of swearing and abusive language.

Q. And did you see who was doing that?

A. Yes, sir.

Q. Describe the man with reference to what he had in his hand that was doing that.

A. Well, he had a shotgun.

Q. And tell what you saw there. What was said and what did you hear?

A. Well, he— There was two other fellows in a car. I couldn't—I didn't know the man, and he brandished  
1325 this shotgun, and I also heard him say he was going to blow one of them's head off if they moved the car.

Q. Did they move the car?

A. No, sir.

Q. How many times did you hear him say he would blow their heads off?

A. Once.

Q. Do you know anything about this case in any way, or are you interested in it?

A. No, sir.

Q. Were you subpoenaed to come here?

A. Yes, sir.

Q. Have you discussed this matter with me?

A. Yes, sir.

Q. And Judge Donaldson?

A. Yes, sir.

Mr. Knoblock: You may cross examine.

*Cross-Examination by Mr. Heyl.*

Q. When did you talk to them about it?

A. Well, about two weeks ago.

Q. Two weeks ago?

A. Something like that.

Q. Two weeks ago what day?

A. About the 8th, 7th or 8th of January.

Q. 7th or 8th of January?

A. Somewhere along in there. I don't recall the date.

Q. How did you happen to talk with them then?

1326 A. They asked me to give them a statement.

Q. Who asked you?

A. A fellow by the name of McGrath or McGraw that work over there.

Q. Works where?

A. T. P. & W.

Q. Where did he find you?

A. He found me at 3123 South Adams.

Q. Had you told anyone anything about it before that?

A. Well, we had discussed the thing. We seen it in the paper. We wondered what was going on.

Q. Did you tell anyone outside of your own family about it?

A. Yes.

Q. Who?

A. A lot of men talked about it.

Q. Talked about it generally, did you?

A. Well, no, not exactly generally.

Q. Did they pay you anything for that statement?

A. No, sir.

Q. Pay you anything for coming up here?

A. Subpoena fees.

Q. How much did they pay you?

A. \$2.00.

Q. Who paid you that?

A. The deputy marshal.

Q. What's your business?

A. Switchman.

Q. Where?

A. P. & P. U. Railroad.

Q. That is where you are working now?

1327 A. Well, I haven't worked there for over a year.

Q. You belong to one of these Brotherhoods, do you?

A. Yes, sir.

Q. And you are interested in this controversy, then?

A. No, sir.

Q. As soon as you saw the Brotherhood had something to do with this, you told them you could tell them something about it, did you?

A. I could tell them something about it, and I did tell them something about it.

Q. And you did immediately?

A. Yes.

Q. So that is the reason you are interested in this case?

A. I am not interested in it at all.

Q. Have you attended one of the Brotherhood's meetings?

A. Once in a year.

Q. Have you attended any of the meetings of this Brotherhood—

A. No, sir.

Q. —since this strike occurred?

A. No, sir.

Q. What have you been doing the last year?

A. Living off of my insurance.

Q. Not doing anything?

A. No, sir.

Q. Were you asleep the day this happened?

A. No, sir.

Q. What were you doing at the time?

A. Well, we were sitting up in my kitchen drinking coffee.

Q. You and your brother-in-law?

A. Yes, sir.

1328 Q. He was there, too, drinking coffee?

A. Yes, sir.

Q. How long had he been drinking coffee?

A. Oh, we had been there an hour or so.

Q. Johnson is his name, isn't it?

A. Yes.

Q. And he had been drinking coffee there about an hour?

A. Yes, sir. Well, we had—

Mr. Heyl: That's all.

A. —having our breakfast.

Mr. Knoblock: That's all.

1329 W. E. CAUSEY, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Knoblock.*

Q. Will you state your name?

A. William E. Causey.

Q. Are you one of the defendants in this case?

A. I am.

Q. Directing your attention to the date of December 30, 1941, between 5:30 and 6 P. M., I will ask you if you were near the hard road at the entrance of the lane leading to the T. P. & W. yards.

A. I was.

Q. Did you observe Hershel Thompson drive his automobile northerly on the lane onto the hard road that evening?

A. I did.

Q. And what occurred?

A. He got hit by a light truck.

Q. And after the accident, tell what happened.

A. Oh, he moved his car west probably seventy-five feet.

Q. What happened to the truck?

A. Well, it pulled over on the north side east a little ways.

Q. Were you around the Thompson car when Zeno Merrill got out of it?

A. No, sir.

Q. Do you know what transpired up on the hard road?

A. No, sir.

Q. When did you first see Merrill that evening?

1330 A. When he was coming down the ditch.

Q. What did you see happen there?

A. He ran into the—bumped his head on the culvert, and went down.

Q. Was anybody in the ditch after him at that time?

A. No.

Q. Did you ever see anybody in the ditch there that night after him?

A. No.

Q. What did you do after he bumped his head into the culvert and fell down?

A. He got up, so I took hold of his hand and helped him out of there.

Q. After you helped him out of it, what did you do then?

A. I led him up to his own car and he got in.

Q. Did you at any time strike Mr. Merrill that evening?

A. No, sir.

Q. At any time that evening did you use force of any character or kind upon Mr. Merrill?

A. No, sir.

Q. Did you that evening threaten Mr. Merrill in any way, manner or form?

A. No, sir.

Q. Now, directing your attention to December 30, 1941, at 7:55 A. M., did you talk to a truck driver by the name of A. H. Rinck?

A. No, I didn't.

Q. Did you hear A. H. Rinck testify here in this court room in behalf of the plaintiff he had talked to you that morning?

A. No, I didn't.

Q. Did you or did you not see or talk to A. H. Rinck the morning of December 30, 1941, at 7:55 A. M., or 1331 any other time that morning?

A. No, sir.

Q. Are these the only two places that you have been mentioned in the testimony of the plaintiff in this case, to your knowledge?

A. At the end of the lane is the only place I have ever been mentioned.

Q. And how far were you—when the Thompson car came to a stop, how far were you from it, approximately?

A. Oh, I expect—you mean after it was hit?

Q. After it was hit and pulled off the highway.

A. Oh, I expect seventy-five feet.

Q. Were you ever any closer to the car until it was later moved than that distance there?

A. No, sir.

Q. Have you, at any time since this strike has been in effect, thrown any stones, clubs, missiles of any kind or character at any of the employees of the plaintiff or any of their private property?

A. No, sir.

Q. Have you at any time ever used any language threateningly, threatening injury or damage in any manner or form to any of the employees or the property of this plaintiff?

A. No, sir.

Q. Now,—

Mr. Knoblock: You may cross examine.

Just a moment!

Q. Have you on any occasions observed or heard Mr. Frank Coyle or Walter Keiser give any instruction with reference to the use of violence in this strike?

1332 A. Yes, sir.



Q. What have those statements been?

Mr. Heyl: I object; self-serving.

The Court: He may answer.

Q. What were they?

A. They told us no violence.

Q. Have they told you that just once, or how frequently?

A. About every time I have been to a meeting.

Mr. Knoblock: I think that is all.

*Cross-Examination by Mr. Heyl.*

Q. Did you ever hear at any meeting any discussion of what had happened?

A. No, sir.

Q. You didn't discuss that?

A. No, sir.

Q. Did you hear of any engine or caboose being struck by stones?

A. I haven't heard of it. I read of it.

Q. You heard from the men at the time, didn't you?

A. No, sir.

Q. You didn't know that was going on?

A. Not until I read it in the paper.

Q. Were you on any picket line?

A. At the end of the lane.

Q. And is that the only one?

A. I was at the viaduct once.

Q. Did you ever see these nails, or nails like them, up there at the head of the lane (showing witness Plaintiff's Exhibit 19)?

A. No, sir.

1333 Q. Never saw any of those?

A. No, sir.

Q. Did you have anything to do with putting them under the cars up there?

A. No, sir.

Q. You helped break up and burn a nail keg, didn't you?

A. No, sir.

Q. You are sure of that, are you?

A. Yes, sir.

Q. Did you ever stop a car that went into the lane?

A. No, sir.

Q. Or one that was coming out?

A. No, sir.

Q. Did you ever say anything to anyone driving?

A. No, sir.

Q. Have you ever seen that done?

A. I have seen cars stop. I wouldn't say they were stopped by anyone.

Q. There were a number of men there all the time?

A. Yes, sir.

Q. When you picked up Mr. Merrill, how far was he from where you were when this accident occurred?

A. I was right where I had been all the time.

Q. He was about fifty feet from the car when you picked him up, was he not?

A. Yes, fifty or seventy-five.

Q. And he was about seventy-five to a hundred feet west of the intersection of the hard road and the lane, wasn't he? That is where his car was?

1334 A. It was between fifty and seventy-five.

Q. He was about a hundred and fifty feet from the intersection of the lane?

A. No, sir.

Q. You weren't up there all the time, were you?

A. I were at the—on top of this culvert all the time.

Q. You were?

A. Yes.

Q. What business had you on the culvert?

A. That is where I was doing picket duty.

Q. Is that where he was pushed down?

A. I didn't see him pushed down.

Q. He was on the ground?

A. I didn't see him until he was in the ditch.

Q. You heard some commotion up there?

A. Yes.

Q. You heard something that sounded like fighting?

A. I heard some hollering, yes.

Q. And it sounded to you like fighting?

A. No, sir.

Q. What did it sound like?

A. Like talking.

Q. Which was it? Talking or hollering?

A. Hollering.

Q. How far were the voices from where you were?

A. I couldn't say.

Q. There were several?

A. I heard a couple of voices.

Q. How many of you men were up there when  
1335 you heard this hollering and commotion?

A. I don't know.

Q. Will you give us your judgment?

A. I don't know.

Q. Will you give me the names of anyone up there?

A. I can't. I don't know.

Q. And they were strikers up there? Everyone was a  
striker except this man?

A. I don't know.

Q. You said a moment ago they were strikers.

A. I don't know. I presumed they were up there.

Q. Did you go up there where they were at any time?

A. No, sir.

Q. Did you see Mr. Kirk and Mr. McMullen leave the  
picket line and go up to this car?

A. No, sir.

Q. You didn't see that?

A. No, sir.

Mr. Heyl: That's all.

*Redirect Examination by Mr. Knoblock.*

Q. Who was on picket duty with you that evening, Mr.  
Causey?

A. There was Mr. McMullen and C. L. Brown and my-  
self, and Walter Kohtz was there, but he wasn't on picket  
duty.

Mr. Knoblock: That's all.

*Recross Examination by Mr. Heyl.*

Q. Were you arrested?

1336 A. Yes, sir.

Q. You were taken in by the police, weren't you?

A. Yes, sir.

Q. And gave bond?

A. Yes, sir.

Q. For assault upon Mr. Merrill?

A. Yes, sir.

Q. Who signed your bond?

A. I don't know.

Q. You don't know?

A. I didn't ask nobody to.

Q. You didn't ask anybody?

A. No.

Q. Pretty liberal over there, aren't they?

Mr. Knoblock: I object.

The Court: Objection sustained.

Mr. Knoblock: That's all.

The Court: I would like to ask you a question:

What was your work?

A. Engineer.

Q. The Court: You had been at that about how long?

A. About twenty years.

Q. The Court: When you read about these different injuries to the property over there and the trains and things like that, you read that in the newspapers, I take it?

A. Yes.

Q. The Court: Did the newspaper have any suggestion of what might have caused it? Did they say anything  
1337 in the paper about whether it was caused by the former employees?

A. I couldn't say it did.

Q. The Court: When you went to these meetings on the next evening and evenings after that, didn't you ever ask the fellows if they had anything to do with that?

A. No, I never asked the fellows anything.

Q. The Court: You never made any inquiry?

A. No, sir.

The Court: That's all.

*Recross Examination Resumed by Mr. Heyl.*

Q. Isn't it a fact every article published in the Peoria papers with reference to violence said former employees and strikers were throwing stones at the trains? Isn't that a fact?

A. It probably is.

Q. You read that?

A. I read the paper.

Q. There wasn't a single item in the paper that did not record the fact that these trains were being stoned by former employees, isn't that right?

A. The paper would say so.

Q. You made no inquiry of any of the men or anybody about it?

A. I didn't ask anybody anything. I didn't want them to tell me.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

1338 CLARENCE L. BROWN, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Knoblock.*

Q. State your name.

A. Clarence L. Brown.

Q. Are you one of the defendants in this case?

A. Yes, sir.

Q. Directing your attention to the evening of December 30 at 6 P. M., between 5:30 and 6 P. M., I will ask you if you were standing at the head of the lane next to the hard road, Route 24, that leads to the yards of the plaintiff.

A. Yes, sir.

Q. Were you present there when Herschel Thompson drove his car northerly out of the lane onto the hard road?

A. Yes, sir.

Q. Will you tell us what happened? Tell us what you did and what occurred from then on in.

A. Mr. Thompson drove out on the hard road and collided with a light delivery truck, so Mr. Thompson pulled off about 45°, I would say, from the top of the lane, and the men in the truck pulled practically straight across the lane, and Mr. Thompson, he came down to talk to the men that he had collided with, and he talked to him there for a minute or so, and I noticed across the road at Mr. Thompson's car there was kind of a commotion, so I walked up the hard road on the opposite side of the road where Thompson's car was, and, as I got practically straight across from where his car was, Mr. Merrill rushed across the road.

1339 Q. What happened?

A. He came in the direction I was, with his fists out, and he made a motion at me, and I struck him. He kind of backed against this guard rail and lost his balance, and went back in the ditch backwards, and he got up and went straight down the ditch toward the culvert, and I

walked down that way, and Mr. Causey at that time helped or gave Mr. Merrill a hand, and helped him back in the car he came from.

Q. On this occasion, who struck first? You or Zeno Merrill?

A. Well, I wouldn't say that Merrill struck, but he came at me with his intentions—with his fists.

Mr. Heyl: I object to his intention, and ask to have it stricken.

The Court: He stated the position his fists were in. It may stand.

Q. Had you been over near the Thompson car when Merrill first got out of it?

A. No, sir.

Q. You were on which side of the road at that time?

A. I was on the opposite side of the road that Merrill came from.

Q. Did you go over after Merrill?

A. No, sir.

Q. Which side of the road did he come to?

A. He came from the opposite side of the road where Mr.—well, he came from the same side of the road Mr. Thompson had left his car parked, that is, he went to the opposite side of the road.

Q. Who else was there at that time?

A. Mr. Causey was there at the head of the lane 1340 and in the car, Mr. McMullen was there.

Q. Do you remember seeing Walter Kohtz there?

A. Mr. Kohtz was there.

Q. Do you remember seeing Mr. Todd there?

A. There was some other person, but I wouldn't swear to that, but those two people was about there.

Q. Other than this one occasion at the head of the lane,—Then, directing your attention to December 30, or the same day, around 6 or a little after, do you recall the occasion when Mr. C. L. Brown—I mean Mr. Carl W. Sund drove out of the lane to the hard road?

A. Well, I don't know as that was the same day, but Mr. Sund did come out on the hard road, and I was talking with him.

Q. Did you at that time in any way threaten Mr. Sund in any way, manner or form?

A. I did not.



Q. The fact of the matter is, you came to his assistance, didn't you?

A. Yes, I came across there when some of the boys got to talking kind of loud, and I explained I had worked for Mr. Sund, and that he was all right.

Q. Outside of those two occasions, have you been mentioned by any of the witnesses that have testified on behalf of the plaintiff?

A. Not that I know of.

Q. Have you at any time ever thrown any rocks, bricks, missiles, of any kind or character?

A. No, sir.

Q. At any time at any of the employees of the plaintiff, or any of their private property?

A. No, sir.

1341 Q. Other than this one occasion with Merrill, have you at any time threatened or struck at any of the employees of this plaintiff?

A. No, sir.

Mr. Knoblock: I think that's all.

*Cross-Examination by Mr. Heyl.*

Q. How far did you walk down to the Thompson car after you heard the commotion?

A. Well, I walked probably—That lane there is probably, oh, I would say twenty feet.

Q. You walked how far?

A. Probably twenty feet from the end of the lane.

Q. How long had the commotion been going on before you started to walk down there?

A. It hadn't much more than started.

Q. Then when you got down there, you saw Mr. Merrill coming?

A. Yes, coming across.

Q. Away from the fellows up near the car, is that it?

A. He came across the road.

Q. Away from the men up there on the pavement, is that right?

A. Yes.

Q. And where the commotion was, when you first started down there, is that right?

A. Yes, sir.

Q. And the commotion indicated to you there was some kind of a fight going on?

A. Not necessarily.

Q. What was the commotion?

A. Well, it was just more or less—more a movement of the feet, or something. I heard someone talking.

Q. Could you see anything?

A. No, I couldn't see—I did see the two men and this man coming across the street.

Q. Was there another man coming with him?

A. No, sir.

Q. Coming alone?

A. Coming by himself.

Q. So, when he got to the culvert, you took a soak at him?

A. He never got to the culvert.

Q. You hit him before he got there?

A. He was probably twenty feet above the culvert.

Q. You hit him before he got to the culvert?

A. Yes, sir.

Mr. Heyl: That's all.

*Redirect Examination by Mr. Knoblock.*

Q. Describe the position that he had his fists in as he approached you.

A. He came out with the intention of a man preparing himself to fight.

Mr. Heyl: I move to strike.

The Court: It may be stricken.

Q. Describe the position of his fists.

A. He had his fists doubled up, as I explained a while ago.

Mr. Knoblock: That's all.

1343 *Recross Examination by Mr. Heyl.*

Q. It's dark there?

A. Not so dark.

Q. Was it dark or light?

A. Light enough I could see his fists doubled up. I couldn't tell a man from that distance.

Q. How far were the men at the car to where you hit Mr. Merrill?

A. The distance of the hard road.

Q. Twenty feet?

A. Twenty or thirty feet. The car was off the road eight or ten feet.

Q. You didn't have any business up there?

A. Where?

Q. Where the commotion was?

A. The same as anybody else had.

Q. Did you have any business up there?

Mr. Knoblock: I object; asked and answered.

The Court: It may stand.

You mean was he patrolling that?

Mr. Heyl: I will ask another question.

Q. What did you go up there for?

A. To see what the commotion was.

Q. To get into it?

A. Not necessarily. I really didn't know what was going on.

Q. You knew who was up there?

A. No.

Q. You knew Thompson was up there?

A. Thompson wasn't up there.

Q. You knew they went up and looked through the window?

1344 A. I don't know one looked through the window.

Q. One had a lantern?

A. Not that I know.

Q. You didn't see that at all?

A. No, sir.

The Court: Just one question:

Did you know who Merrill was when you hit him?

A. Yes, I knew who he was at the time.

DELMAR G. NEWDIGATE, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to.

*Direct Examination by Mr. Knoblock.*

Q. State your name.

A. Delmar Newdigate.

Q. Are you one of the defendants in this case?

A. I am.

Q. Do you know the two defendants, Walter C. Keiser and Frank Coyle?

A. I do.

Q. Have you heard them on any occasions make any statements with reference to violence or no violence in the conduct of this strike?

A. I have.

Q. What have those statements been with reference—by both Mr. Keiser and Mr. Coyle?

Mr. Heyl: I object as self-serving.

The Court: He may answer.

1345 A. We were instructed at a meeting—

Mr. Heyl: I object. Say what they said.

The Court: Yes, what did they say?

Q. Just say what they said.

A. Mr. Coyle said there was to be no violence at any time from the time the strike began until it ended, there was to be no violence whatever, that was one of the laws of the lodge.

Mr. Heyl: I move to strike.

A. He said that was the law.

The Court: It may stand.

Q. Did you hear Mr. Keiser make any statement in that regard at those meetings?

A. I believe Mr. Keiser covered the same subject in about the same words.

Q. Have you heard them make that statement once, or more than once?

A. They made that statement at two meetings in the Jefferson Hotel, and also a meeting in my basement.

Q. Now, directing your attention to the date of January 2, 1942, at approximately 3 P. M. at the Main Street intersection in East Peoria, Illinois, involving a train of the Burlington Railroad Company, I will ask you if you were there on that occasion.

A. I was.

Q. Will you tell us what happened?

A. I had been driving from picket line to picket line, and at the time it so happened I was on my way at the lumber yard at East Peoria to secure lumber and material for the shanty that has been spoken of at the lower end of the yard, and I noticed that a group of men were gathered at the Main Street crossing and the "Q" engine coming toward them some distance away.

1346 Q. What happened?

A. I stopped my car and got out, stopped my car just off the hard road on Main Street, got out and walked over with my camera ahead of the men, and took a picture of the group of men standing there, and they were holding strike signs.

Q. Did any of the men at that time have any sticks or clubs or stones?

A. There was three strike signs, if I recall, and that is all anyone had in their hands.

Q. What did the Burlington train do?

A. The Burlington train came to within, I would say, fifty feet of the crossing and stopped.

Q. Did any of the striking employees there get up on the railroad right-of-way?

A. They did not. They was in practically a perfect line on the crossing, remained on the street crossing.

Q. Did you upon that occasion have a conference with Mr. Marts?

A. I did.

Q. Tell us what was said there.

A. Mr. Marts called me to one side along with the chief of police of East Peoria, and asked me—He said, “Now, I have been instructed by my superiors to attempt a delivery to the T. P. & W.” He said, “I want something definite to take back to them”, and he asked me—He said, “Are you going to permit me to pass?” As I recall it, I said, “Mr. Marts, I can only speak, of course, for myself and my men.” About that time I looked around, and it was about 3:30, if I recall, and there had been quite a number gathered up from East Peoria, and there must have been thirty or forty cars, I imagine, men going to the  
1347 “Caterpillar” and coming from the “Caterpillar”, that had stopped also. By that time there was at least seventy-five or a hundred gathered there. At the time the train was actually stopped there was only about ten or twelve men that were pickets that were there.

Q. What did you say to Mr. Marts?

A. As I looked at this large group, some of them started talking loud and insisting they didn't pass, and I said, “Mr. Marts, after what has occurred this morning, I don't believe it would be a safe thing for me or you, either, to ask this group of men to take your engine by.” I said, “We are doing everything that we can to keep peace and

all, and I can only speak, of course, for me myself and my men, but there are a lot here I don't know."

Q. How many were there you didn't know?

A. Outside of about ten or twelve men, I didn't know any of the rest of them.

Q. Were any of the rest, outside of ten or twelve, striking employees of the T. P. & W.?

A. I only knew the men that were employees of the railroad. A lot were strangers, and they had "Caterpillar" badges on, and they were doing a lot of talking.

Q. Referring your attention to January 1, 1942, at approximately 11 P. M., do you recall an occasion when Carroll Payne and Boris J. Glavash—you encountered them?

A. I remember the occasion. I don't remember the time or date.

The case that was mentioned—

Mr. Heyl: I want to object to this witness reading from something.

Mr. Knoblock: You mean reading from his notes?

The Court: Objection overruled.

1348 Mr. Heyl: I want to know what it is on for the privilege of cross examining.

A. I have been taking notes during the proceeding.

I remember the occasion of that, and I was present, but Mr. Gabbert stepped over to the car, I believe, and said something to Carroll Payne, and I believe I said, "Hi, Carroll." I didn't know the other gentleman.

Q. At that time did you hear Mr. Gabbert or anyone else present make any threats of any kind or character to either Carroll Payne or Boris Glavash?

A. I didn't hear any threats, no. I heard Gabbert ask Payne if he had been riding on the footboard of an engine.

Q. Did he say it would be too bad for him and his family if he continued that?

A. No, he did not.

Q. On the occasion when Mr. Kipling testified that you were at the Allied Mills on January 2, 1942, did you at any time ever get south of the Allied Mills on that date?

A. I was just south of the crossing just previous to the time that I turned around and headed back to Peoria at the time mentioned by Kipling.

Q. And after you passed Kipling there on that occasion, did you ever again on that day go south of that point?

A. Not on that day.

Q. Mr. Newdigate, have you at any time ever thrown



any stones, rocks or missiles of any kind or character at any of the property of this plaintiff, or any of their employees?

A. I have not.

Q. Have you at any time ever made any kind of a threat toward this plaintiff or any of its employees?

A. I have not.

Q. Who set the date for the strike, Mr. Newdigate?

A. Well, as I recall, it was set by the men themselves at the meeting, voted.

Q. And who voted for the strike?

A. We all voted for it.

Q. And how many of the group went out on strike?

A. All but the two that stayed in the employ of the company. That was a hostler and hostler helper.

Q. How many were out on strike?

A. I believe there was a hundred and six of us, and two stayed in; one hundred and four.

Mr. Knoblock: I think you may cross-examine.

*Cross-Examination by Mr. Heyl.*

Q. What do you do? What did you do before the strike?

A. You mean in the employ of the railroad?

Q. Yes, sir.

A. Switchman.

Q. And you are an officer of one of the Brotherhoods, are you?

A. I am just a chairman in the Toledo, Peoria and Western.

Q. Chairman of what?

A. Brotherhood of Railroad Trainmen.

Q. And you say one of these meetings was held in your basement?

A. Quite a number of meetings were held in my basement.

Q. What was the purpose of holding them in the basement?

A. That we should have a place to meet every day, and the same place.

1350 Q. They had a room at the Jefferson Hotel?

A. Later. At that time our grand lodge officers were sent to Washington on a wild goose chase.

Q. That was in early days?

A. Yes.

Q. You don't blame us for that? After the strike started, meetings were held at the Jefferson Hotel, were they not?

A. They were.

Q. Were they all held there after you started to hold them there?

A. There was two meetings held at the Jefferson Hotel previous to the meeting for the strike. After the strike was in force, all of the meetings have been held at the Jefferson Hotel.

Q. None in your basement?

A. No, sir.

Q. Mr. Keiser and Mr. Coyle, two defendants in this case who have been at the trial table of defendants' counsel since the beginning of the case, were present at all the meetings you attended, weren't they?

A. No, not all the meetings I have attended. As I have said, they were in Washington.

Q. I am not talking about Washington. Let's keep on the strike.

A. I am talking about the strike.

Q. On December 28, 1941?

A. When all the men were present? When all the men were present, Mr. Coyle and Keiser were not present at all the meetings.

Q. Were they present at most of the meetings?

A. At a great number of meetings.

Q. How many meetings did you have every day?

A. We have had a meeting every day.

1351 Q. They were present at every meeting since the strike started?

A. I wouldn't say they have been at every one.

Q. They have been directing the strike for their two Brotherhoods?

A. I wouldn't say "directing" it. That has been my job more or less.

Q. Then you have been directing the strike for both Brotherhoods?

A. No, sir, Mr. Totten is the chairman.

Q. Mr. Totten is the chairman of one Brotherhood?

A. Brotherhood of Locomotive Firemen and Engineers.

Q. So you and Mr. Totten are chairmen?

A. Local chairmen.

Q. Local chairmen who have been directing this strike?

A. More or less.

Q. You have been on the job every day?

A. Yes, sir, day and night.

Q. And you have gone back from one picket line to another?

A. I have.

Q. Did you ever see a striker throw a rock at a train?

A. I have not.

Q. Did you ever see any railroad property struck by a rock, or any windows broken?

A. I have not.

Q. Did you ever hear of it?

A. I have.

Q. Did you do anything about it?

A. I have.

Q. What did you do about it?

A. I have insisted more than once that there should be no violence.

Q. You read the newspaper on January 1 that certain men had assaulted Mr. Merrill, and had thrown rocks at the trains and stoned the trains, didn't you?

A. I have read quite a bit of the news in the newspapers in regard to it.

Q. Did you ever take that up at the meeting?

A. Yes; not so much at the meeting, but individuals I have heard mentioned.

Q. Were you down there following that train that was going west on the morning of January 2?

A. I went as far as Allied Mills.

Q. You saw it several times in the meantime?

A. I did.

Q. Did you see strikers following the train?

A. I was along with Kipling's car, followed with Kipling's car.

Q. How many of you followed Kipling's car?

A. John Gimming's car was behind his car, and I believe I was ahead of Kipling's car.

Q. What was the purpose of following Kipling's car?

A. He was following the train, and that was our intention.

Q. What were you following the train for?

A. I heard there was quite an argument on the inside between Mr. Funk and Mr. Gifford, and that Mr. Funk had told Mr. Gifford that he was getting tired of doing all the piloting and taking all the rap out there, and that Mr. Gif-

ford wasn't any higher official than he was, and that it was his turn to take one out.

Q. That was the reason you followed the train?

A. I did.

Q. Gifford wasn't on the train, was he?

A. He was not.

1353 Q. Was Funk on the train?

A. He was.

Q. Why were you following the train, then?

A. Until I saw Mr. Funk.

Q. You saw him before it got down there?

A. No; I didn't drive down to Edmund Street or any other crossing that was mentioned.

Q. Where did you pick up Kipling and Gimming?

A. I saw Kipling on Washington Street before we got to Edmund Street, but I didn't turn down Edmund Street.

Q. You waited for them?

A. I stopped at the "Stop" light, and they were ahead of me.

Q. Did you stop for any reason except the "Stop" light?

A. I waited a while until they come up because the train hadn't crossed the crossing.

Q. How far were you from the crossing?

A. I stayed on Washington.

Q. You talked with your other men when you were traveling down below?

A. No, sir. Farther down beyond the viaduct leading to Bartonville, the train stopped at what we call the "M. & St. L. set-out" and, as they were setting out the cars, we were stopped alongside the pavement. Kipling's car and Gimming's car and my—or the Gimming—pulled up alongside of my car.

Q. They told you Funk was on the train?

A. I had seen him.

Q. Why did you go below if you knew he was on the train?

A. For the same reason that has been mentioned before: To see when Funk got off the train.

1354 Q. Is that the only reason?

A. Yes.

Q. Is that the best excuse you have for following the train?

A. If you can think of a better one,—

Mr. Knoblock: I object.

The Court: Sustained.

Q. Did you follow that train to see if Mr. Funk had got out?

A. I knew he was on it.

Mr. Knoblock: I object.

The Court: He answered.

Q. You said you knew he was on, and you followed it?

The Court: He may answer.

A. I continued down to the Allied Mills to see if Funk got off.

Q. You first followed to find if Funk was on?

A. That's right.

Q. You said you found out he was on at Edmund Street and, notwithstanding that, you followed it down to Allied Mills, is that correct?

A. That's correct.

Q. What was the purpose of following if you knew he was on?

Answer my question!

A. I am answering it. By the time I got that far, I wanted to see if he would get off.

Q. You thought he would get off in that mob?

A. There wasn't any mob near him.

Q. Wasn't there a mob below Allied Mills?

A. No, there wasn't a mob below Allied Mills.

Q. You saw from fifteen to twenty-five men down there?

A. No, sir.

1355 Q. And isn't that the reason you turned around and came back to Peoria? Because you didn't want to get mixed up?

A. No, sir.

Q. You knew there was going to be violence?

A. No, sir, I only saw four.

Q. What became of Gimming's car?

A. His car was sitting there when I left.

Q. Where?

A. Allied Mills.

Q. Where was Gimming's car?

A. Ahead of Kipling's car.

Q. Where was Totten's car?

A. I don't know.

Q. You knew he had gone on to get planted so he could hit that engine when it went by?

A. I hadn't seen him all day. I did not.

Q. You knew it wouldn't be good for the Brotherhood if the chairman was around and there was violence, and you came back to Peoria?

Mr. Knoblock: I object.

The Court: Objection sustained.

Q. What were you going to do to Funk when he got off?

A. I wasn't going to do a thing.

Q. The reason, you said, you followed was to see when he got off?

A. I wasn't going to do a thing.

Q. What business was it of yours if he got off the train?

A. I wanted to know—

Q. Please answer the question. It was a childish answer.

Q. Did you intend to beat him when he got off the train?

A. He is a bigger man than I am.

1356 Q. Did you?

A. I didn't.

Q. Did some of the thugs you had—

Mr. Knoblock: I object.

The Court: Objection sustained.

Q. Did you have any rocks in your car?

A. I certainly didn't.

Q. I want you to state to this court whether or not you ever saw any man picketing throw a rock at any train, engine or caboose on any other train.

A. I have not.

Q. Did you ever hear of any of them doing it?

A. I have heard of them doing it, but not who.

Q. You couldn't find out?

A. No, I haven't.

Q. You bought some ball bats up at the hardware store on the bluff?

A. I did not.

Mr. Heyl: That's all.

Mr. Knoblock: That is all.



1357 WALTER C. KEISER, called on behalf of the defendants, and having been previously sworn, testified as follows, in answer to

*Direct Examination by Mr. Knoblock.*

Q. Mr. Keiser, will you please state your name?

A. Walter C. Keiser.

Q. Are you one of the defendants in this case?

A. I am.

Q. What position do you hold with the Brotherhood of Locomotive Firemen and Enginemen?

A. Vice president.

Q. How long have you been in that capacity?

A. Since August last year.

Q. I will ask you if you have attended any of the meetings of the striking employees of the T. P. & W. Railroad since the strike, or since the men went out on strike December 28, 1941?

A. I have attended most of them.

Q. Did you attend meetings prior to that date?

A. Yes, I attended meetings prior to that date.

Q. Have you made any statements to these men with reference to violence in connection with the strike?

A. Yes, I have.

Mr. Heyl: I object; self-serving.

The Court: Objection sustained.

Q. What statements have you made, Mr. Keiser?

A. I have informed them there should be no violence.

Q. How frequently have you so stated?

A. I will say at least fifty per cent of the meetings  
1358 I have made that statement sometime during the meeting.

Q. Have you at any time instigated, advised, suggest or manipulated any encounter or any meeting between the striking employees and the employees of the T. P. & W. wherein you have suggested violence be used?

A. I never have.

Q. What has been your position in that regard?

Mr. Heyl: I object to this as self-serving.

The Court: He may answer.

A. That there should be no violence.

Q. Have you ever been present, or have you ever observed, at any time any violence of any kind or character,

either by physical force or by verbal threats by the striking employees toward the employees of the T. P. & W., or any of their private property?

A. No, I have not.

Q. In what capacity have you acted here in this matter?

A. In an advisory capacity.

Q. Is that the same capacity that the Brotherhood whom you represent acts in all strike matters?

A. That's correct.

Q. What has been the statements that you have made to the men with reference to picketing?

Mr. Heyl: I object to that as self-serving.

The Court: He may answer.

A. I have not directed the men in the picketing.

Q. I will ask you this—in what manner—will you describe to the court, if you know, how these men are placed on the picket line? By what process?

A. We have a committee that assigns the pickets 1359 for each twenty-four hour period.

Q. Do you mean the Brotherhood or the local people?

A. I mean the meetings of the strikers selects the committee.

Q. Do you have anything to do with the selection of that committee?

A. Nothing whatever.

Q. Do you have anything to do with the— Do you have anything to do with that matter as far as the committee is concerned?

A. No.

Q. I will ask you whether or not the Brotherhood whom you represent, the B. of L. F. & E., have offered to arbitrate this dispute.

Mr. Heyl: I object as immaterial.

The Court: It has been proved. I don't see how it would hurt or help either side.

He may answer.

A. Yes, we have agreed to accept arbitration.

Mr. Knoblock: I think you may cross examine.

*Cross-Examination by Mr. Heyl.*

Q. Mr. Keiser, as I understand it, you and Mr. Coyle have been here for weeks in relation to this dispute and the strike?

A. That's correct.

Q. And you have known all of the operations of the strike and the pickets during that period of time?

A. I haven't known all of the operations of the striking pickets.

Q. You have known where they were sent? Did you not?

A. Not always.

Q. You knew that pickets were being sent to 1360 picket the train on January 2, did you not?

A. I did not.

Q. You knew the pickets were going to stop the engine 71, didn't you?

A. I did not.

Q. And you knew that the pickets were picketing the other railroads, did you not?

A. I knew we had a picket line at Main Street, East Peoria.

Q. And you knew on December 31, 1941, that a number of the men who had met with you at the meetings had been accused of assaulting an employee of the railroad; did you not?

A. I read the newspapers, yes, sir.

Q. You read everyone of them?

A. I read most of them.

Q. And you knew on the evening of December 31 that Walter Kohtz, Walter McMullen, W. E. Causey, Todd and Carl Roskamp and C. L. Brown were arrested and accused of beating one of the employees of the T. P. & W.?

A. I knew that, yes, sir.

Q. Did you do anything about that? Did you ever talk to any of these men about it?

A. Did I ever talk to them? I went to East Peoria at the time that it happened.

Q. You were over there when it happened?

A. No, after it happened, and they were taken to the police station.

Q. You got them out?

A. They stated they were not guilty.

Q. Did you get them out? Did you sign the bond?

A. I did not.

1361 Q. Do you know who signed the bond?

A. I couldn't say definitely; two of the members who own property in East Peoria.

Q. Did you say anything to those men, or any of the men, about that incident after that?

A. No, I have not interviewed the men and questioned them about the incident.

Q. You never mentioned anything at meetings of this incident?

A. I told the men I had arranged for bond, and they would be represented.

Q. I have asked if you talked with the men in subsequent meetings about beating up Mr. Merrill.

A. Not in subsequent meetings, no.

Q. Are you in favor of violence in a labor association?

A. I am not.

Q. You are not objecting to an injunction that restrains people from destroying property?

A. I am against an injunction that prevents strikers from properly protecting their interests.

Q. Do you think it is necessary for them to destroy the property to protect their interests?

A. It depends on what you call "destruction of property".

Q. I call throwing stones at engines and knocking out headlights and things of that kind. Is that necessary to protect their interests?

A. I do not approve of violence in strikes.

Mr. Heyl: Read the question.

(Question read by reporter.)

Mr. Knoblock: I object to that.

1362 The Court: He may answer.

Mr. Heyl: I think we have a right to show what he meant by "violence".

A. I would say not.

Q. You didn't say anything to any of these men that were accused of beating Mr. Merrill with reference to continuing that thing, did you?

A. I have told the men in a number of meetings there should be no violence.

Q. I am talking about this specific thing. I am asking if you talked to any of these men about beating Merrill?

A. These men are not guilty until proven guilty.

Q. That is true under the law, but I am asking you a question. You didn't answer except by evasion. Did you talk with these men about beating Merrill?

A. I did not.

Q. You never mentioned that afterward at any union meeting, did you?

A. I did not.

Q. You have been making some public statements in the newspapers with reference to this strike, haven't you?

A. We have made a few signed statements.

Q. You made a statement in the newspapers there would be no emergency board appointed?

A. I have never made such a statement.

Q. Your associate, Mr. Coyle, did?

A. Not that I know of.

Q. On December 23 you issued a statement jointly, and had it published in the Peoria papers that there would be no emergency board appointed?

1363 A. No, sir.

Q. Did you do that?

A. No, sir.

Q. Have you read it in the paper?

A. I have read a good many things in the paper that are not correct.

Q. Did you read that statement in which they quoted you and Mr. Coyle that there would be no fact-finding board appointed to investigate this strike?

A. I don't recall having read that, and we couldn't make that statement because we do not appoint the fact-finding board.

Q. If that statement was made, it was made without your authority, is that true?

A. That's right.

Q. Did you talk to these men about the incident down below the Allied Mills when they attempted to burn up an engine?

A. I did not.

Q. You heard about it, didn't you?

A. I read it in the paper.

Q. And you had meetings after that?

A. That's right.

Q. Did you say anything to the men, your strikers, with reference to that incident?

A. I told them there should be no violence.

Q. Did you say anything about the incident of trying to burn up the locomotive?

A. No, sir, because I don't think our men attempted to burn the locomotive.

Q. You think it just caught fire?

A. I think a lot of these things are fixed by carriers.

1364 Q. You are prejudiced against the carriers?

A. I might be against this particular carrier.

Q. You don't believe the men threw a stone at any of these engines or locomotives or cabooses at any time?

A. I don't know whether they did or not.

Q. After you found the newspapers had carried the statement that the locomotive was attacked by a mob of from fifteen to twenty-five men, did you say anything about that at the next meeting of the union?

Mr. Knoblock: I object to the word "mob"; no evidence of that.

The Court: He asked if he read such a statement in the paper, if he did did he say anything about it.

A. Read the question, please.

(Question read by reporter.)

A. I don't recall that I did.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

1365 FRANK W. COYLE, called on behalf of the defendants, and having been previously sworn, testified as follows, in answer to

*Direct Examination by Mr. Knoblock.*

Q. Mr. Coyle, state your name, will you?

A. Frank W. Coyle.

Q. And your residence?

A. St. Paul, Minnesota.

Q. What capacity do you have with the Brotherhood of Railroad Trainmen?

A. Vice President.

Q. How long have you held that office?

A. Since July of last year.

Q. Now, Mr. Coyle, I will ask you if you have been present here in Peoria since the date that this strike went into effect on the 28th day of December, 1941.

A. Yes, sir.

Q. Were you here for a short period prior to the date?

A. Yes, I was.



Q. Have you made any statements to the men in meetings or any other time with reference to the conduct in this strike?

A. Yes, I have.

Q. And what have been your statements in that regard?

A. That the law of the Brotherhood was opposed to violence, and that we would not tolerate it.

Q. Have you made that statement to them more than once?

A. Yes, several times.

Q. How frequently would you say you made that statement?

1366 A. Oh, possibly every third or fourth meeting, something like that, maybe every second meeting.

Q. Have you at any time arranged for, suggested, incited or in any way indicated to the striking employees of the T. P. & W. Railroad that they should resort to violence in this matter?

A. At no time have I ever indicated it.

Q. Have you indicated anything else in that regard with reference to picketing?

A. In reference to picketing, I told them they should always comply with the law and not trespass in any way, and to be careful there would be no acts of violence on the picket line.

Q. Have you observed certain statements in the newspapers with reference to acts of violence?

A. I have.

Q. What have you done in reference thereto at the meetings when that has been brought to your attention?

A. I remember on a couple of different occasions, when I observed in the newspapers there was news items concerning acts of violence, and I talked with the men and told them they had public support in this matter, and that the people of Peoria, in general, were behind them, and it would be to their interest, their best interest, to refrain from any acts of violence because we didn't want it, and I said I hoped none of the our members were committing these acts of violence because, if they did, they would turn public opinion against them.

Q. Have you at any time, Mr. Coyle, or the Brotherhood whom you represent, ever suggested or intimated to any of the striking employees that any violence of any kind or character should be indulged in?

A. No, sir.

1367 Q. Who voted for the strike in this case?

A. The employees. So far as our organization, the conductors, brakemen, yardmen and switch tenders.

Q. Who set the date for the strike?

A. The employees; the general committee.

Q. How are the pickets assigned to the picket line?

A. Well, they are assigned by either the general chairman or somebody acting in his place, because, when the strike first started, I counselled with general chairman Newdigate, and suggested to him, or discussed with him, the advisability as to where we should have picket lines, and I told him that was his duty to take care of that.

Q. In what capacity have you appeared here in this strike?

A. As a representative of President Whitney in an advisory capacity.

Q. Is your position here in this strike any different than that taken by your Brotherhood in any other strike?

A. It is the same in all cases.

Q. And in your official position here you have acted in behalf of your Brotherhood, is that right?

A. Yes, sir.

Mr. Knoblock: I think you may cross-examine.

*Cross-Examination by Mr. Heyl.*

Q. As I understand you, then, Mr. Coyle, you do not approve of violence or trespass on the property of the railroad.

A. That's true.

Q. Then you have no objection to the court restraining the boys that have stoned or injured the property?

1368 A. I don't think there is any need of an injunction.

Q. Just answer my question. Do you have any objection to it?

Mr. Knoblock: I object to that.

The Court: Read the question.

(Question read by reporter.)

The Court: Objection sustained.

Q. Did you follow up the incidents that were reported to you and in the newspapers of specific men that were

charged with stoning or injury to the train or beating up the men?

A. I have answered that.

Q. Did you follow that up in each instance?

A. What do you mean by "follow up"?

Q. What did you do about it?

A. I talked to the men about it, and told them that I hoped they weren't responsible for it.

Q. You hoped that?

A. Yes.

Q. You said your Brotherhood wouldn't tolerate any violence?

A. Absolutely, no.

Q. Did you do anything in assisting the public authorities in finding out the men that were damaging or trespassing on this property?

A. I didn't think that was my duty.

Mr. Knoblock: I didn't hear that.

(Question and answer read by reporter.)

Q. I insist on an answer.

A. I think that is an answer.

The Court: That is an answer. The answer may stand.

Q. You couldn't do anything, could you?

1369 A. What could I do? I didn't do anything about it.

Q. Did you go and try to find out the truth about it?

Mr. Knoblock: I object.

The Court: He may answer whether he went.

A. I wouldn't know where to go.

Q. You wouldn't know where to go, but it was in the newspapers each day?

Mr. Knoblock: I object.

The Court: Objection sustained.

Q. Did you read the newspapers as your associate, Mr. Keiser, did every day?

Mr. Knoblock: I object. How would he know?

The Court: Objection sustained.

Q. Did you read the newspapers?

Mr. Knoblock: I object.

The Court: He may answer.

A. Yes.

Q. Did you read in the newspapers violence was being charged while this strike was on?

A. On some few occasions; not every day, no.

Q. Did you make any effort to find out if it was true your men were doing that or not?

A. I believe I answered that question.

Q. That is the way you want to leave it, is it?

A. Yes, sir.

The Court: Is that all with this witness?

Mr. Heyl: That's all.

Mr. Knoblock: That is all.

(Recess.)

1370 Mr. Knoblock: Your Honor, the defendants rest.

The Court: The defendants rest?

Anything in rebuttal, gentlemen?

Mr. Heyl: I think we will rest, Your Honor, rather than have this case go over.

The Above and Foregoing Was All the Evidence Offered in Chief on the Trial of Said Case on Behalf of the Defendants.

The Court: I will say, if you are all resting, gentlemen, I would like to hear in this case a discussion of each one of these defendants. It's rather difficult for me to remember the names of each one of these men. I have tried to take a few notes in defense of each one, and I can remember the testimony with regard to some of them, what they had done, and some had little or no proof about. I would like to hear each of your discuss that thing, together with any motions.

I take it the defense would want to file a motion. Since we have all rested, is there any objection to continuing the restraining order until Monday morning?

Mr. Knoblock: The defense has no objection.

The Court: Has the plaintiff any objection?

Mr. Elliott: No, Your Honor.

The Court: Let the record show it is continued by  
1371 consent. That is the only order.

Mr. Knoblock: Can we understand the restraining order will not be continued ten days?

The Court: It will be heard Monday morning, and settled Monday morning.

9:30 in the morning suit you gentlemen?

Mr. Elliott: You don't need any written order?

I have have one prepared.

The Court: The rule both of you read said "except by consent".

Let the record show by consent of both parties. We don't care for any other order. You did consent.

Mr. Knoblock: That's right but, if the court will accommodate me to the extent that it will be extended on motion of the court,—

The Court: I think it must be by consent or good cause shown. I will sign this other order which shows cause. I take it it shows cause?

Mr. Elliott: Yes.

Mr. Knoblock: I would prefer the showing of cause.

(Mr. Elliott reads order.)

Mr. Elliott: I left the time and place blank.

The Court: We will date it until Monday afternoon. It might take you that long to get in an order. Three days? You don't count today?

Mr. Knoblock: No.

The Court: Until January 19 at 5 P. M. We will get rid of that before that.

(Discussion off the record.)

1372 Trial Adjourned at 5 o'clock P. M.

The Above and Foregoing Was All the Evidence Offered on the Trial of Said Case.

January 19, 1942.

Trial Resumed at 10 o'clock A. M.

Appearances:

Same as before.

The Court: Do you want to be heard on this motion?

Mr. Knoblock: Yes.

Mr. Heyl: Before we proceed with this case, I would like to call the court's attention to the fact that, after the adjournment of this court last Friday, on Saturday evening one of the parties who testified in this case, an engineer, Mr. Funk, was attacked by two men with rifles who shot at him and at the locomotive, and I would like to make that proof in this case before the record is closed. I think this court should know the circumstances under which that dastardly conduct was carried on, and therefore I ask at this time that the record be opened, and that we be permitted to put Mr. Funk on the stand so that he may testify to these facts. I think it should be in the record.

1373 The marshal knows about it because he was called into the matter immediately after and inspected the

engine, and knows what the facts are with reference to the bullets shot into the engine.

The Court: Wouldn't that be a violation of any injunction that might be issued, or restraining order?

Mr. Heyl: It is simply additional proof in support.

Mr. Knoblock: We want it understood we are denying that completely.

Mr. Heyl: You have denied everything.

Mr. Knoblock: So have you!

The Court: I think we will proceed.

Mr. Heyl: I want the record to show this offer is made.  
(By direction, closing arguments not transcribed.)

Closing Arguments recessed at 12:30 P. M.

Closing Arguments resumed at 1:30 P. M.

The Court: We seem to have reached the conclusion of this very lengthy and very well-tryed law suit, and I say that on the part of both of you.

There never was any more difficult case to decide than one involving the rights between the plaintiff and defendant in a suit of this sort. It is especially difficult, of course, because of the fact that there is, and always has been, a great deal of interest and a great deal of animosity and a great deal of feeling in regard to the rights of employer and employee. There has been in this case a great deal of

talk or discussion on the part of the lawyers that this court ought to take into consideration the contract

that has been submitted, or the working conditions that have been submitted, and the refusal of the plaintiff to abitrate this cause. There isn't any way I can see I can do anything of that sort. It is absolutely beyond my power to determine the rights between the plaintiff and defendants as to what the contract should be. I don't know what the working conditions submitted by the plaintiff were and, if I did, it wouldn't help me in determining the issues between these two parties, the plaintiff and the defendants.

The plaintiff has a right to refuse to arbitrate, just the same as the defendant refused to arbitrate at one time, if I remember the evidence correctly. The defendants refused once, and later agreed to arbitrate and the plaintiff refused to arbitrate.

Gentlemen, I think you men, as lawyers, know there isn't any way the government of the United States could



pass a law compelling arbitration in a case of this sort. I don't think that would be constitutional. It might be the proper thing to do to arbitrate this cause. As far as the court is concerned and knows, it would be the proper thing to do, but I can't compel that sort of thing. I can't determine that question at all. There isn't anything for me to determine except the issue of fact that is presented in this particular case, and that issue is purely, first, has this court jurisdiction.

This court, of course, has jurisdiction in a great many matters. It only acquires jurisdiction in the violations, as you heard this morning so frequently, of some particular law. The question has been raised that there isn't any particular law controlling because the constitutional question of interference with commerce is not based upon a particular law, but is a part of the constitution that has been brought down for many years and has been interpreted by courts, and it has been determined positively that it isn't only over administration of it, but the absolute control.

I think we can find numerous cases (many, many cases have been read here wherein there isn't any question) that if it is interstate commerce and it is being interfered with forcibly and violently or by threats this court has jurisdiction. That has been the finding of the courts, and is the finding of the court now.

Then the question arising under the Labor Act is, Has violence been used? Have there been threats of intimidation or something that might affect the people in or outside of this particular railroad not a factor, and has the plaintiff exercised all the power it could to obtain all the aid and assistance possible without calling on this court?

It was mentioned this morning (I think by Mr. Cassidy) it was the purpose of the National Labor Relations Act to get away from a great number of injunctions formerly issued in this court. It was a former growth of opinion among federal courts that you could go in and get injunctions and just about everything without any proof so that it made it especially unattractive from the viewpoint of a person an injunction is being asked against. In other words, it is necessary for a plaintiff to come into court and prove violence has been done, or at the time of the filing or prior thereto there was violence in the management of the business that resulted in injury to property or injury to person.

In this particular case what do we find? I think, gentlemen of the Bar, you couldn't help but agree with me Merrill didn't jump out of that car for the purpose of fighting. They showed he was sitting on the floor. I don't think that was denied, and I think the witnesses for the defendants said he was on the floor and jumped out like a rabbit. The court could not believe that story, nothing except that when Merrill came out, either pulled or ordered out, he came out with fear rather than a desire to start a fight.

I know how those things occur. There was the heat and belief and feeling that they had rights and somebody was taking their jobs, but the law just doesn't permit that, and it occurs to the court, if something isn't done to prevent that sort of thing without denying the right of peaceful picketing and the rights of the employees, if the court doesn't do something and that should continue, if gasoline and rocks can be thrown into cabs and people assaulted on the street, it will result in more serious things than we have at the present time, so the thing to do is to determine what is peaceful picketing and what isn't. That sort of thing just isn't, and this court, or no other court, can permit that sort of thing.

This court doesn't want to deny any single member of these organizations or anybody here the right to 1377 peaceful picketing and these things they can do, and

I hope, after this temporary injunction is issued (and I am going to issue a temporary injunction against this sort of violence), the court won't be called upon to enforce the law because, if people are called in for violating this injunction—not from peaceful picketing (don't misunderstand me)—but violating this injunction or threatening to kill or injure, throwing gasoline or striking with rocks, there isn't anything this court can do to protect you. It can't be done. Anything else, any peaceful picketing, any effort that you may make under, or any rights you have under, the law can be done, but I haven't any such right, and no other person has a right, to do that sort of thing. The protection of your jobs in a peaceful manner is never denied to you, and never should be denied to you, but if we continue with the kind of conduct I feel quite positively has been proved here, it would result in perhaps somebody going to jail for murder or something of that sort of thing, because it is purely a bad condition (and I think you will agree it is a bad condition), but there have been some

persons brought in the court doesn't feel should be found guilty of the offense.

I think a man named Cole only talked to a truck driver; O. W. Kirk and C. H. Kirk, they talked about this matter, and the picture was taken.

Mr. Heyl: They were identified at two or three other places.

1378 The Court: I didn't understand they were forcible.

They said to the truck driver, "You shouldn't come in." A man name Feldt didn't have anything to do with it, as I understand it.

I am going to give the benefit of the doubt to the two gentlemen that represent the organizations. I can't believe that those men would come here and do other than they said they met to do, and they said they didn't believe in this sort of thing, and I don't believe they did. They perhaps can do a little more toward assisting us in preserving law than they have done, but I am not going to find them guilty in this particular case, F. W. Coyle and W. C. Keiser.

As to all other defendants, a temporary injunction may be drawn restraining them from any violence.

There was one man whose brother, some brother, was talked about here. This man Stetler— Who was some brother that was brought in as a defendant?

Mr. Knoblock: The organizations should not be enjoined, Your Honor.

The Court: Yes, I think they shou'd. I think there is no doubt about it. That is the only way to prevent it.

Mr. Elliott: There are two Kohtz brothers.

The Court: The other Kohtz was not identified.

Mr. Elliott: Walter Kohtz was.

The Court: The other Kohtz may be found not guilty.

Mr. Knoblock. There is only one Kohtz a defendant.

The Court: You may prepare an order. Has it  
1379 been submitted to counsel?

Mr. Elliott: I have not.

The Court: We will take a recess.

Mr. Elliott: We also have a finding of facts.

The Court: Submit it to counsel.

(Recess.)

Mr. Heyl: The plaintiff asks leave to amend the original complaint on the face of same by adding, after the name of the defendant, The Brotherhood of Railroad Trainmen, the words "Enterprise Lodge No. 27" in the title of

the case and also on the first page of the complaint in the third line thereof; and by adding, after the name of the defendant, Brotherhood of Locomotive Firemen and Enginemen, the words "Robert Mason Lodge No. 926" in the title of the case, and also on the first page of the complaint in the fifth line thereof.

Plaintiff also asks leave to amend the prayer of the complaint, on page 33, by adding, after the words, Brotherhood of Railroad Trainmen, in the first line of paragraph (A) the following: "Enterprise Lodge No. 27"; and by adding, after the words, Brotherhood of Locomotive Firemen and Enginemen, in the third line of said paragraph (A), the words "Robert Mason Lodge No. 926".

The Court: Leave granted.

Endorsed: Filed April 21, 1942, G. W. Schwaner, Clerk.

Filed  
Jan. 15,  
1942.

1380 And afterwards, to-wit: on the 15th day of January, A. D. 1942, there was filed in the office of the clerk of said court in said cause, a certain Amendment to Complaint, which said Amendment was and is in the words and figures following, to-wit:

1381 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—P-149) • •

### AMENDMENT TO COMPLAINT.

Now comes Toledo, Peoria & Western Railroad, plaintiff, by its undersigned attorneys, and by leave of court first had and obtained files the following amendment to its complaint heretofore filed herein on January 3, 1942.

Amend said complaint filed January 3, 1942 by adding the following Paragraph immediately after Paragraph (22) of said complaint, said amended Paragraph being designated as Paragraph (22½) as follows:

"(22½) That prior to the effective date of said strike so called by said defendants and others and after negotiations between plaintiff's former employees and negotiations with the representatives of the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen representing the employees on plaintiff's road and mediation of the dispute between plaintiff and the defendants with the representative of the National Mediation Board had failed to accomplish an adjustment

of the dispute between the plaintiff and the defendants, plaintiff urged the National Mediation Board to recommend to the President of the United States the appointment of an emergency board and fact finding body in accordance with the provisions of the Railway Labor Act in the hope that the controversy between plaintiff and the defendants, and other employees of the same classes as the defendants named, could be adjusted but that the National Mediation Board failed and neglected to make such recommendation; that the request of the plaintiff for the recommendation of the appointment of an emergency board in accordance with the provisions of the Railway Labor Act was made in good faith for the purpose of endeavoring to adjust the differences between it and its employees and to avoid the possibility of a strike; that notwithstanding such request on the part of the plaintiff no emergency board or fact finding body was appointed."

(s) John M. Elliott,

(s) Clarence W. Heyl,

*Attorneys for the Plaintiff.*

John M. Elliott,  
1401 Alliance Life Building,  
Peoria, Illinois,  
and

C. W. Heyl,  
Central National Bank Building,  
Peoria, Illinois,  
*Attorneys for the Plaintiff.*

1383 State of Illinois }  
County of Peoria } ss.

Geo. P. McNear, Jr., being first duly sworn on oath, deposes and says that he is President of the Toledo, Peoria & Western Railroad, plaintiff in the above entitled cause; that he has read the above and foregoing amendment to the complaint and that the matters and things therein set forth are true.

(s) Geo. P. McNear, Jr.

Subscribed and sworn to before me this 15th day of January, A. D. 1942.

(Seal)

(s) Esther M. Schulthes,  
*Notary Public.*

Endorsed: Filed Jan. 15, 1942, G. W. Schwaner, Clerk.

Filed  
Jan. 15,  
1942.

1384 And afterwards, to-wit: on the 15th day of January, A. D. 1942, there was filed in the office of the clerk of said court in said cause, a certain Motion by Defendants to vacate order of January 8, 1942 extending the Temporary Restraining Order to January 17, 1942, to dismiss the Complaint herein filed and to deny the application of plaintiff for a Temporary Injunction, which said Motion was and is in the words and figures following, to-wit:

1385 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—P-149) • •

### MOTION.

Now comes all of the defendants herein and each of them individually by George Donaldson and Cassidy, Knoblock & Sloan, their attorneys, at the close of the evidence introduced in behalf of plaintiff at the hearing on its application for a temporary injunction and moves the court to vacate the order entered herein on January 8th, 1942 extending the temporary restraining order to January 17th, 1942, to dismiss the complaint herein filed and to deny the application of plaintiff for a temporary injunction and for grounds of said motion states:

(1) That on January 3rd, 1942 this court granted a temporary restraining order without notice against these defendants and then on January 8th, 1942, entered an order extending said order to January 17th, 1942, which said order is invalid and void under the terms of Title 29 § 107 U. S. C. A., which provides that "Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days."

(2) That the complaint filed in this court is insufficient in law to state a claim upon which the relief prayed for may be granted because:

1386 (a) Said complaint does not allege facts showing any jurisdiction of a District Court of the United States over said cause in that said complaint neither alleges facts showing diversity of citizenship between plaintiff and defendants nor fact showing that the suit "arises under the Constitution or laws of the United States or



treaties made . . . or under any other circumstances which give a District Court of the United States jurisdiction of the cause.

(b) Said complaint alleges facts showing that the case grows out of a labor dispute but does not allege fact showing that unlawful acts have been threatened and will be committed or have been committed and will be continued unless restrained; does not allege facts showing that substantial and irreparable injury to plaintiff's property will follow; does not allege facts showing that as to each item of relief granted greater injury will be inflicted upon plaintiff by the denial of the relief than will be inflicted upon defendants by the granting of the relief; does not allege facts showing that plaintiff has no adequate remedy at law; does not allege facts showing that the public officials charged with the duty to protect plaintiff's property are unable or unwilling to furnish adequate protection; does not allege facts showing that plaintiff has complied with all obligations imposed by law upon it, or has not failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

(3) That the evidence introduced in behalf of plaintiff fails as to each and all of said defendants to prove that plaintiff is entitled to the relief prayed for in said complaint.

(4) That the evidence introduced in behalf of 1387 plaintiff fails to prove as to each and all of said defendants that unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained; that substantial and irreparable injury to plaintiff's property will follow; that as to each item of relief granted greater injury will be inflicted upon plaintiff by the denial of relief than will be inflicted upon defendants by the granting of relief; that complainant has no adequate remedy at law; that the public officers charged with the duty to protect plaintiff's property are unable or unwilling to furnish adequate protection; that plaintiff has complied with all obligations imposed by law on it and that it has not failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any governmental machinery of mediation or voluntary arbitration; that as to the defendant Brotherhoods and its officers and members said evi-

dence does not show that any acts committed were done so upon clear proof of actual participation in or actual authorization of such acts or of ratification of such acts after actual knowledge thereof.

/s/ George Donaldson,  
/s/ Cassidy, Knoblock & Sloan,  
*Attorneys for Defendants.*

Endorsed: Filed Jan. 15, 1942. G. W. Schwaner, Clerk.

Entered  
Jan. 15,  
1942.

1388 And afterwards, to-wit: On the 15th day of January, A. D. 1942, the following further proceedings were had in said court and entered of record in said cause, to-wit:

1389 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—P-149) \* \*

Thursday, January 15, 1942.

Court met pursuant to adjournment.

Present, the Honorable J. Leroy Adair, Judge.

And now on this 15th day of January, A. D. 1942, come again the parties to this cause by their attorneys, and the further hearing on the plaintiff's application for temporary injunction is hereby resumed. And now at the conclusion of the plaintiff's evidence, the plaintiff moves the court for leave to file an amendment to the complaint herein, and the court having heard said motion and being fully advised in the premises, it is ordered by the court that said motion be and the same is hereby allowed, and the amendment to the complaint is hereby filed. Now come the defendants herein and present their motion to vacate the order entered herein on January 8th, 1942, extending the temporary restraining order to January 17th, 1942, to dismiss the complaint herein filed and to deny the application of plaintiff for a temporary injunction, and the court having heard said motions and being fully advised in the premises, it is ordered by the court that same be and are hereby denied. And now the hour for adjournment having arrived, the further hearing hereof is postponed until 9:30 o'clock a. m. tomorrow.

1390 And afterwards, to-wit: On the 15th day of January, A. D. 1942, there was filed in the office of the clerk of said court in said cause, a certain Amendment to Complaint, which said Amendment was and is in the words and figures following, to-wit:

Filed  
Jan. 15,  
1942.

1391 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—P-149) • •

AMENDMENT TO COMPLAINT.

Now comes Toledo, Peoria & Western Railroad, plaintiff, by its undersigned attorneys, and by leave of court first had and obtained files the following amendment to its complaint heretofore filed herein on January 3, 1942.

Amend said complaint filed January 3, 1942 by adding the following Paragraph immediately after Paragraph (22) of said complaint, said amended Paragraph being designated as Paragraph (22½) as follows:

“(22½) That prior to the effective date of said strike so called by said defendants and others and after negotiations between plaintiff's former employees and negotiations with the representatives of the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen representing the employees on plaintiff's road and mediation of the dispute between plaintiff and the defendants with the representative of the National Mediation Board had failed to accomplish an adjustment of the dispute between the plaintiff and the defendants, plaintiff urged the National Mediation Board to

recommend to the President of the United States the

1392 appointment of an emergency board and fact finding body in accordance with the provisions of the Rail-

way Labor Act in the hope that the controversy between plaintiff and the defendants, and other employees of the same classes as the defendants named, could be adjusted but that the National Mediation Board failed and neglected to make such recommendation; that the request of the plaintiff for the recommendation of the appointment of an emergency board in accordance with the provisions of the Railway Labor Act was made in good faith for the purpose of endeavoring to adjust the differences between it and its employees and to avoid the possibility of a strike;

that notwithstanding such request on the part of the plaintiff no emergency board or fact finding body was appointed."

/s/ John M. Elliott,  
/s/ Clarence W. Heyl,  
*Attorneys for the Plaintiff.*

John M. Elliott,  
1401 Alliance Life Building,  
Peoria, Illinois,  
and  
C. W. Heyl,  
Central National Bank Building,  
Peoria, Illinois,  
*Attorneys for the Plaintiff.*

1393 State of Illinois, }  
County of Peoria. } ss.

Geo. P. McNear, Jr., being first duly sworn on oath, deposes and says that he is President of the Toledo, Peoria & Western Railroad, plaintiff in the above entitled cause; that he has read the above and foregoing amendment to the complaint and that the matters and things therein set forth are true.

/s/ Geo. P. McNear, Jr.

Subscribed and sworn to before me this 15th day of January, A. D. 1942.

(Seal) /s/ Esther M. Schulthes,  
*Notary Public.*

Endorsed: Filed Jan. 15, 1942. G. W. Schwaner, Clerk.

1394 And afterwards, to-wit: on the 16th day of January, A. D. 1942, at 5 o'clock p. m., a certain Order Extending and Continuing in force Temporary Restraining Order until January 19, 1942, at 5 o'clock p. m., was filed in the office of the clerk of said court and entered of record in said cause, which said Order was and is in the words and figures following, to-wit:

Entered  
Jan. 16,  
1942.

1395 IN THE UNITED STATES DISTRICT COURT.  
\* \* (Caption—P-149) \* \*

**ORDER EXTENDING AND CONTINUING IN FORCE  
TEMPORARY RESTRAINING ORDER.**

This cause now coming on to be heard upon the application of the plaintiff for a temporary restraining injunction as prayed in the complaint, and for an order extending and continuing in force the temporary restraining order entered herein January 3, 1942 and extended and continued in full force and effect for a period of nine (9) days from January 8, 1942 at 3:15 o'clock p. m.; and the court having heard the evidence offered on behalf of the plaintiff in support of its application for temporary injunction and a part of the evidence offered on behalf of the defendants and it appearing to the court that the hearing on the application for temporary injunction cannot be concluded and a decision rendered thereon before the expiration of said temporary restraining order heretofore issued, finds that it is necessary that said temporary restraining order be extended and continued in full force and effect for a period of three (3) days from this date; and the counsel for defendants having objected to the extension of said temporary restraining order and the court having overruled said objection.

1396 Upon Consideration Thereof, It Is Ordered, Adjudged And Decreed that the temporary restraining order heretofore entered herein, under date of January 3, 1942 at 3:50 o'clock p. m. and extended and continued in full force and effect until January 17, 1942 at 3:15 o'clock p. m., be and the same is hereby extended and continued in full force and effect until January 19, 1942, at 5 o'clock P. M., pending the completion of the hearing of plaintiff's

application for temporary injunction herein and the decision of this court upon said application.

This order is entered extending and continuing in full force and effect said temporary restraining order because of the inability of the court to complete the hearing on the application of the plaintiff for a temporary injunction and the decision of the court on such application.

(s) J. Leroy Adair,

*Judge.*

Entered: January 16, 1942, at 5 o'clock, p. m.

Endorsed: Filed Jan. 16, 1942, at 5 p. m. G. W. Schwaner, Clerk.

Filed  
Jan. 19,  
1942.

1397 And afterwards, to-wit: on the 19th day of January, A. D. 1942, there was filed in the office of the clerk of said Court, a certain Motion by Defendants to vacate the order entered herein on January 8th, 1942 extending the temporary restraining order to January 17th, 1942 and also the order entered January 16th, 1942, extending the temporary restraining order to January 19th, 1942, to dismiss the complaint herein filed and to deny the application of plaintiff for a temporary injunction, which said Motion was and is in the words and figures following, to-wit:

1398 IN THE DISTRICT COURT OF THE UNITED STATES.  
\* \* (Caption—P-149) \* \*

### MOTION.

Now comes all of the defendants herein and each of them individually by George Donaldson and Cassidy, Knoblock & Sloan, their attorneys, at the close of all the evidence, at the hearing on the application for a temporary injunction and moves the court to vacate the order entered herein on January 8th, 1942 extending the temporary restraining order to January 17th, 1942 and also the order entered January 16th, 1942 extending the temporary restraining order to January 19th, 1942, to dismiss the complaint herein filed and to deny the application of plaintiff for a temporary injunction and for grounds of said motion states:



(1) That on January 3rd, 1942 this court granted a temporary restraining order without notice against these defendants and then on January 8th, 1942 entered an order extending said order to January 17th, 1942 and then on January 16th, 1942 entered an order extending said restraining order to January 19th, 1942 which said orders are invalid and void under the terms of Title 29 § 107 U. S. C. A., which provides that "Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days."

(2) That the complaint filed in this court is insufficient in law to state a claim upon which the relief prayed 1399 for may be granted because:

(a) Said complaint does not allege facts showing any jurisdiction of a District Court of the United States over said cause in that said complaint neither alleges facts showing diversity of citizenship between plaintiff and defendants nor facts showing that the suit "arises under the Constitution or laws of the United States or treaties made. . . ." or under any other circumstances which give a District Court of the United States jurisdiction of the cause.

(b) Said complaint alleges facts showing that the case grows out of a labor dispute but does not allege facts showing that unlawful acts have been threatened and will be committed or have been committed and will be continued unless restrained; does not allege facts showing that substantial and irreparable injury to plaintiff's property will follow; does not allege facts showing that as to each item of relief granted greater injury will be inflicted upon plaintiff by the denial of the relief than will be inflicted upon defendants by the granting of the relief; does not allege facts showing that plaintiff has no adequate remedy at law; does not allege facts showing that the public officials charged with the duty to protect plaintiff's property are unable or unwilling to furnish adequate protection; does not allege facts showing that plaintiff has complied with all obligations imposed by law upon it, or has not failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

(3) That the evidence introduced in behalf of plaintiff fails as to each and all of said defendants to prove that

plaintiff is entitled to the relief prayed for in said complaint.

1400 (4) That the evidence introduced in behalf of plaintiff fails to prove as to each and all of said defendants that unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained; that substantial and irreparable injury to plaintiff's property will follow; that as to each item of relief granted greater injury will be inflicted upon plaintiff by the denial of relief than will be inflicted upon defendants by the granting of relief; that complainant has no adequate remedy at law; that the public office charged with the duty to protect plaintiff's property are unable or unwilling to furnish adequate protection; that plaintiff has complied with all obligations imposed by law on it and that it has not failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any governmental machinery of mediation or voluntary arbitration; that as to the defendant Brotherhoods and its officers and members said evidence does not show that any acts committed were done so upon clear proof of actual participation in or actual authorization of such acts or of ratification of such acts after actual knowledge thereof.

/s/ George Donaldson,  
/s/ Cassidy, Knoblock & Sloan,  
*Attorneys for Defendants.*

Endorsed: Filed Jan. 19, 1942. G. W. Schwaner, Clerk.

Entered  
Jan. 19,  
1942

1401 And afterwards, to-wit: on the 19th day of January, A. D. 1942, the following further proceedings were had in said court and entered of record in said cause, to-wit:

1402 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—P-149) \* \*

Monday, January 19, 1942.

Court met pursuant to adjournment.

Present, the Honorable J. Leroy Adair, Judge.

Come again the parties to this cause by their respective attorneys and the further hearing on the application for a

temporary injunction is resumed and after hearing the arguments of counsel and at the close thereof the defendants herein by their attorneys move the court to vacate the order entered herein on January 8, 1942 extending the temporary restraining order to January 17, 1942 and also, the order entered herein on January 16, 1942 extending the temporary restraining order to January 19, 1942, to dismiss the complaint herein and to deny the application of the plaintiff for a temporary injunction, and the court having duly considered the said motions and being fully advised in the premises, it is ordered by the court that each of the said motions be and is hereby denied.

On motion of the said plaintiff by its attorneys, it is ordered by the court that leave be and is hereby given the said plaintiff to amend the original complaint on the face of same by adding after the name of the defendant, the Brotherhood of Railroad Trainmen, the words "Enterprise Lodge No. 27" in the title of the case and also on the first page of the complaint in the third line thereof;

and by adding after the name of the defendant, 1403 Brotherhood of Locomotive Firemen and Enginemen, the words "Robert Mason Lodge No. 926" in the title of the case and also on the first page of the complaint in the fifth line thereof.

It is further ordered by the court on motion of the said plaintiff by its attorneys that leave be and is hereby given the said plaintiff to amend the prayer of the complaint herein on page 33 thereof, by adding, after the words, Brotherhood of Railroad Trainmen, in the first line of paragraph (a), the following: "Enterprise Lodge No. 27", and by adding, after the words, Brotherhood of Locomotive Firemen and Enginemen, in the third line of said paragraph (A), the words "Robert Mason Lodge No. 926".

1404 And afterwards, to-wit: on the 19th day of January, A. D. 1942, certain Finding of Facts and Conclusions of Law were filed in the office of the clerk of said court and entered of record in said cause, which said Findings of Fact and Conclusions of Law were and are in the words and figures following, to-wit:

Filed  
Jan. 19,  
1942.

1405

IN THE UNITED STATES DISTRICT COURT.

\* \* (Caption—P-149) \* \*

## FINDINGS OF FACT.

The court having heard the evidence produced in open court in support of the complaint of the plaintiff finds and files herein the following findings of fact:

(a) The plaintiff is a corporation duly organized and existing under the laws of the State of Illinois, and is now and has been for many years last past engaged in operating a railroad between Effner, Indiana and Keokuk, Iowa through the State of Illinois; and is now and has been for many years last past a common carrier of freight by railroad within the State of Illinois and into the States of Iowa and Indiana and in connection with other roads; and is now and has been for many years last past engaged in interstate commerce under the laws of the United States; and is a railroad subject to the provisions of an Act of Congress, namely, "An Act to Regulate Commerce," and all Acts amendatory and supplementary thereto.

(b) The plaintiff as a common carrier is subject to the Railway Labor Act of the United States as amended, and as such carrier subject to and included within the words "War Utilities" as defined by the Federal Statutes.

(c) The plaintiff in connection with its business as a common carrier maintains and operates a railroad extending from Effner, Indiana to Keokuk, Iowa, with various branches or spurs connecting with other interstate railroad carriers.

(d) That the plaintiff has in good faith complied with all of the provisions of the Railway Labor Act in endeavoring to reach an agreement with the Brotherhoods and its employees; that the plaintiff has complied with all its obligations imposed upon it by the laws of the United States relating to Labor disputes.

(e) That on or about December 28, 1941, the plaintiff received written notice from officers of said Brotherhoods that all employees of the classes represented by said Brotherhoods would be withdrawn from the service of the plaintiff at Six P. M., on Sunday, December 28, 1941; and that said employees were withdrawn from the service of the plaintiff at Six P. M., on Sunday, December 28, 1941, and have since refused to return to their respective places of

employment with the plaintiff; that prior to the calling of said strike by said Brotherhoods the plaintiff was engaged in handling of interstate traffic between the State of Illinois and other states through the State of Illinois, from and between other states, the said traffic so handled by the plaintiff included the transportation of war materials, arms, armaments, ammunition, livestock, clothing, food, foodstuffs, fuel supplies, munitions and other articles and ingredients thereof intended for, or suitable for, the use of the United States or associated nations in connection with the conduct of war; that the action of the defendants following said strike, as hereinafter found and set forth in this order, have interfered with and now interferes with and prevents the plaintiff from continuing as such common carrier in the transportation of such articles; that the freight and material transported by plaintiff prior to the said strike included the articles aforesaid, and the plaintiff, by reason of the unlawful and unauthorized acts of the defendants, has been prevented, and is now being prevented, from the transportation of such articles in interstate commerce.

1407 (f) That the defendants and other persons who have congregated with them have come upon the premises of the plaintiff, or roadways leading to said premises in the vicinity of the plaintiff's railroad in great numbers, and by threats, abusive language, intimidations and violence have caused other employees of the plaintiff to cease their employment and remain away from their work by reason of their fear of violence and injury; and the said defendants have prevented other persons desiring to enter the employ of the plaintiff from doing so by reason of threats of violence, violence and intimidations; that said acts have occurred upon the premises of the plaintiff, and upon its trains while the said trains were traveling through the State of Illinois conveying interstate commerce; and the said acts were committed on each of the following days; December 29, 1941, December 30, 1941, December 31, 1941 and January 2, 1942.

(g) That the defendants, on or about December 29, 1941, entered into an unlawful combination or conspiracy to obstruct and interfere with the business of the plaintiff and to interrupt the business of the plaintiff and to destroy the property and business of the plaintiff, all used by it in the transportation of interstate commerce upon its said railroad.

(h) That beginning on December 29, 1941, and continuing thereafter to the date of the filing of the complaint herein, the said defendants and others confederated with them, have congregated in large numbers upon the highway adjacent to a road leading to the yards and property of the plaintiff, and said persons have armed themselves with stones, brickbats, clubs and other missiles and have, by force and threats of personal violence, prevented employees of the plaintiff from going to and from their employment, and have prevented other persons having business with the plaintiff to enter upon the premises of the plaintiff for the purpose of transacting business; and said defendants have threatened violence against said employees of the plaintiff in the event said employees 1408 continued in their said employment and have threatened other employees by ordering them to remain away from the premises of the plaintiff and not return to their respective places of employment.

(i) That by reason of the unlawful and unauthorized acts of the said defendants in their acts of violence and threats of violence against the employees of plaintiff in preventing said employees, by reason of said violence and threats of violence to continue their work as employees of the plaintiff, the said plaintiff has been and is prevented from continuing the operations of its trains in the movement of interstate commerce.

(j) That on December 31, 1941, and again on January 2, 1942, the said defendants congregated in large numbers on the highways parallel and adjacent to a railroad right of way of the plaintiff, and certain of said defendants traveling in automobiles on said highways near the train of the plaintiff, and at various points where said train was required to stop in the transaction of business, the said defendants threatened violence to the members of the crew in charge of said train, and certain of said defendants attempted to halt the progress of said train, and threw stones, bricks and other missiles at the said train, breaking the windows in the engine and caboose of said train, and inflicted bodily injury upon certain employees of the plaintiff while said employees were engaged in the performance of their occupation in operating a train in interstate commerce.

(k) That on January 2, 1942, the said defendants congregated in large numbers upon the highway leading from the Village of Bartonville, Peoria County, Illinois, to Can-



on, Fulton County, Illinois; and at a point near the switch track of the Allied Mills two of said defendants wilfully and maliciously threw glass whiskey bottles with benzine or gasoline into the cab of said engine drawing said train; causing the said substance to explode and set fire to the said locomotive engine and inflicting serious burns upon the engineer and other employees of the plaintiff on said engine.

(1) That on January 2, 1942, certain of said defendants threatened the employees of the plaintiff by advising them that if they, the said employees, took the train of the plaintiff out of Peoria to the western division of said railroad, that said employees would never get back, meaning and intending to commit bodily injury or harm to said employees in the event that they, the said employees, attempted to operate said train of the plaintiff from Peoria to Keokuk, Iowa; and at various points along said railroad right of way the said defendants congregated and made divers other threats to the employees of said plaintiff as they were attempting to operate said train from Peoria to Keokuk, Iowa; and said defendants traveled in automobiles along the highway adjacent to and parallel with said railroad; and at many points where said train was required to stop while in the county of Peoria, the said defendants continued their threats and acts of intimidation and violence and threw stones, bricks, clubs and other missiles at said train and the crew operating the same; and all of said acts found in this paragraph occurred before the said train described in the preceding paragraph reached the point near the switch track of the Allied Mills, when the attempt was made by certain of said defendants to burn said locomotive and injure the employees of the plaintiff therein riding; that all of the acts found to have been committed and set forth in this and preceding paragraphs resulted in the delay and interruption of the interstate commerce business of said plaintiff, and if the said unlawful acts and threatened continuation of similar unlawful acts is not restrained by this Court, the prosecution of the business of the plaintiff as an interstate carrier will be entirely prevented.

(m) That on December 29, 1941, the said defendants greased the high rail on a curve in the plaintiff's railroad track on New Philadelphia hill in the county of McDonough, in the State of Illinois, and that when the engine and train of the plaintiff reached said greased

rail, the engine and train were caused to slip and slide; that the said defendants have threatened to continue similar acts of tampering with the rails and other equipment of the railroad, which, if continued, will result in derailment of trains of the plaintiff, damage to property and loss of life.

(n) That on December 30, 1941, the defendants unlocked switches and broke lamps at the following places upon the said railroad, to-wit: Sheldon; Webster, Leonard, Forrest, LaHogue, and Chatsworth, all stations in the State of Illinois; and that said switches had been turned so as to cause a train to leave the main track; and that because of the destruction or removal of the signals from said switches, the operators of the said trains would be unable to discover or ascertain that said switches had been thrown; and that the continuation of said unlawful and unauthorized acts of the defendants in tampering with the switches or signals upon said switches would result in irreparable loss and damage to the property of the plaintiff and injury to the persons operating said trains.

(o) That on December 31, 1941, one telegraph line of plaintiff's system near Mile Post 4-26, near Webster, Illinois, was cut, and the ends wrapped around two other wires, thereby preventing the operation of the telegraph system of the plaintiff used in the operation of its said railroad.

(p) That on December 29, 1941, on December 31, 1941, and January 2, 1942, certain of said defendants threatened violence against the employees of certain other interstate connecting railroads while said interstate connecting railroads, were, by their said crews, trying to make delivery of certain cars of merchandise and other equipment to the plaintiff, which said cars so being delivered to the plaintiff might be transported on the railroad of the plaintiff, and

which said cars then and there contained interstate 1411 commerce; that by reason of the unlawful acts of the said defendants and their threats of violence against the crews of trains of other interstate connecting carriers, the delivery of many cars of interstate freight to the plaintiff by said connecting carriers was delayed and prevented, and the crews of said other roads feared to make delivery because of threat of injury to them, and fear that they would receive bodily harm from the hands of the said defendants so making said threats; that irreparable damage and injury will result to the plaintiff in the future unless

the said defendants are restrained by injunction of this Court from further interference with the crews operating trains, or portions of trains belonging to other interstate carriers while said crews are attempting to make delivery of interstate commerce to plaintiff.

(q) That unlawful acts have been threatened and will be committed unless restrained, or have been committed and will continue to be committed unless restrained, as set forth in said verified complaint, by persons, associations or organizations named defendants to said complaint, making the threats or committing the unlawful acts;

(r) That substantial and irreparable injury to plaintiff's property will follow, including interference with the transportation of interstate commerce;

(s) That as to each item of relief granted, greater injury will be inflicted upon the plaintiff by the denial of the relief than will be inflicted upon the defendants by the granting of the relief;

(t) That plaintiff has no adequate remedy at law; and

(u) That public officers charged with the duty of protecting plaintiff's property are unable or unwilling to furnish adequate protection to said property or the employees of plaintiff.

(v) That on all of the dates charged in the verified complaint, the said plaintiff was engaged as a common carrier of interstate commerce; that the matter in controversy in this cause is of a civil nature, and exceeds, 1412 exclusive of interest and costs, a sum in excess of Three Thousand Dollars (\$3,000.00).

(w) That said defendants, or some one, or more of them, at various times since the 29th day of December, 1941, and continuing up until the time of the filing of this complaint, have been guilty of acts of violence and threats of violence against various employees of the plaintiff and have damaged and threatened to damage the property, trains and engines of the plaintiff; that various of said defendants have threatened that they will continue such acts of violence; that employees of the plaintiff have been injured, as set forth in said complaint, and as found by this Court in the preceding paragraphs of the findings of this Court; and the Court finds from the sworn evidence heard upon hearing of this application that there is danger of continued acts of violence and damage to the property of the plaintiff by said defendants, or some one or more of them.

(x) That said defendants, or some one or more of them, beginning on the 29th day of December, 1941 and continuing until the 3rd day of January, 1942, at the time of the entry of the temporary restraining order entered herein, by threats of violence and acts of violence as against plaintiff and its employees and its property, and by threats of continued acts of violence since that time, have interfered with the plaintiff in the handling of interstate commerce on its railroad and from the delivery to it by connecting lines of interstate commerce under and in accordance with the "Act to Regulate Commerce," and all acts amendatory and supplementary thereto.

(y) That unless the defendants are enjoined they will, by their acts of violence and threats of violence, continue to interfere with the plaintiff and its employees in the handling of interstate commerce under an Act of Congress, namely, "An Act to Regulate Commerce," and all 1413 acts amendatory and supplementary thereto, and will interfere with the delivery of connecting carriers of cars carrying interstate commerce to the plaintiff.

(z) That this Court has jurisdiction of the parties to and of the subject matter involved in this suit; that the movement of interstate commerce has been prevented and is being prevented by the action of the defendants, or some one or more of them.

#### Conclusions of Law.

(1) That said defendants, or some one or more of them, by their threats of violence, acts of violence and continued threats of violence, have interfered with and will continue to interfere with the facts of the plaintiff in handling interstate commerce in accordance with the provisions of an Act of Congress, namely, "An Act to Regulate Commerce," and all acts amendatory and supplementary thereto, and that the acts and threats of the defendants are unlawful and should be enjoined.

(2) That plaintiff is bound under the terms of the United States Code Annotated, Title 25, Sections 102, 103, 104, 105, 106 and 107, and the provisions of the Railway Labor Act, to permit its employees free agency in the matter of the choice of labor union or organization to act as their representatives.

(3) Plaintiff is entitled to a writ of injunction pendente

lite of this Court restraining and enjoining the defendants, and each of them, as well as their officers, agents, employees, associates and confederates, from doing the acts complained of in its said complaint.

Dated January 19, A. D. 1942.

/s/ J. Leroy Adair,  
Judge.

Endorsed: Filed Jan. 19, 1942. G. W. Schwaner, Clerk.

1414 And afterwards, to-wit: on the 19th day of January, A. D. 1942, at 5 o'clock p. m., a certain Order for Temporary Injunction was filed in the office of the clerk of said court and entered of record in said cause; which said Order was and is in the words and figures following, to-wit:

Entered  
Jan. 19,  
1942.

1415 IN THE UNITED STATES DISTRICT COURT.  
\* \* (Caption—P-149) \* \*

ORDER FOR TEMPORARY INJUNCTION.

This cause now coming on to be heard upon the verified complaint of the plaintiff herein for a temporary injunction, the temporary restraining order heretofore issued herein setting the application for temporary injunction for hearing on this date, the return of the Marshal showing service of said temporary restraining order on the defendants, as well as the mailing of a copy of said restraining order by the Clerk of this Court pursuant to the order of this Court to the Sheriffs of the counties of Peoria, Tazewell, McLean, Livingston, Ford, Iroquois, Fulton, McDonough, Hancock, Henderson and Woodford, being the law enforcing officers, and to the Chiefs of Police of the various cities and villages located upon the line of plaintiff's railroad; and the Court having heard oral testimony under oath produced in said verified complaint and testimony in opposition thereto, and the Court having considered the same, upon consideration thereof, finds:

(1) That unlawful acts have been threatened and will be committed unless restrained, or have been committed and will continue to be committed unless restrained,  
1416 as set forth in said verified complaint, by persons, associations or organizations named defendants to

said complaint, making the threats or committing the unlawful acts;

(2) That substantial and irreparable injury to plaintiff's property will follow, including interference with the transportation of interstate commerce;

(3) That as to each item of relief granted, greater injury will be inflicted upon the plaintiff by the denial of the relief than will be inflicted upon the defendants by the granting of the relief;

(4) That plaintiff has no adequate remedy at law; and

(5) That public officers charged with the duty of protecting plaintiff's property are unable or unwilling to furnish adequate protection to said property or the employees of plaintiff.

(6) That on all of the dates charged in the verified complaint, the said plaintiff was engaged as a common carrier of interstate commerce; that the matter in controversy in this cause is of a civil nature, and exceeds, exclusive of interest and costs, a sum in excess of Three Thousand (\$3,000.00) Dollars:

(7) And the Court having made its findings of fact herein,

It Is Now, Therefore, Hereby Duly Ordered, Adjudged And Decreed By The Court that the said defendants in said cause, namely Brotherhood of Railroad Trainmen, Enterprise Lodge #27, and Brotherhood of Locomotive Firemen and Enginemen, Robert Mason Lodge #926, and W. J. Christoff, J. J. Gimming, Garland F. Brown, W. L. Brown, C. S. Gabbert, Hustler Wilson, Carl Roskamp, George Kneisley, Verd Kirk, H. J. Siebenthal, Herman Reiman, G. L. Underwood, A. R. Overacker, H. O. Todd, Waiter McMullen, W. E. Causey, Walter Kohtz, C. L. Brown, H. J. Dilley, Frank W. Lucas, Leo Totten, Delmar Newdigate and Arthur Brewster, and all persons to whom knowledge of this Temporary Injunction or any writ issued pursuant hereto shall come, be and each and 1417 all of them are hereby temporarily commanded, enjoined and restrained from:

(1) Assaulting or attempting to injure by violence, any of the employees or officers of the plaintiff desiring to return to work, or desiring to work for the plaintiff;

(2) intimidating or attempting to intimidate, by force or violence or personal assault, employees or officers of the plaintiff to keep them from returning to work and continu-



ing their work with the plaintiff, or those desiring to enter the employ of the plaintiff;

(3) Congregating on picket lines in the vicinity of the premises of the plaintiff in numbers in excess of the number fixed by order of the Court, and by threats of violence and acts of violence preventing or attempting to prevent employees or officers of the plaintiff, or those desiring to work for the plaintiff, from entering or reaching the premises of the plaintiff.

(4) Interfering or attempting to interfere with the plaintiff by violence or threats of violence in the operation of its railroad, or the receipt of, transportation or delivery of interstate freight consigned to it or its patrons from points without the State of Illinois to or through points within or without the State of Illinois, and from in any way interfering with the operation of plaintiff's railroad.

(5) From co-operating, confederating and conspiring for the purpose of in any way interfering by force or violence or threats of force or violence with the plaintiff in the handling of war and national defense material, including arms, armament, ammunition, livestock, stores of clothing, food, foodstuffs, fuel, supplies, munitions and all other articles of whatever description, and any part or ingredient thereof, or for use in or in connection with the producing, manufacturing, repairing, storing, mining, extracting, distributing, loading, unloading, or transportation of any of the materials or other articles hereinabove mentioned, or any part or ingredient thereof, and from

interfering by force or violence or threats of force or violence with the handling of any and all material on its trains consigned or moving in interstate commerce.

(6) From congregating at or near the premises of the plaintiff for the purpose of preventing or attempting to prevent, by threats or intimidation or violence, or threats of violence, any person from engaging in or remaining in the employ of the plaintiff.

(7) Singly or in combination or in conspiracy with each other, or with others, preventing or attempting to prevent by threat of force or intimidation, or by force and violence or threat of violence, to any person being employed by the plaintiff, or engaged in or remaining in the employment of the plaintiff or in performing any business, labor or duties for the plaintiff.

(8) By violence or threat of violence, coercing or attempting to coerce any person in the employ of the plaintiff, or about to enter the employ of the plaintiff, not to remain in the employ of the plaintiff.

(9) In any manner interrupting, obstructing or interfering by force or intimidation or by violence or threats of violence with the movement or passage of any person toward, to, upon or from said property of the plaintiff.

(10) In any manner interrupting, obstructing or interfering by force or intimidation or by violence or threat of violence with the movement or passage or shipment or consignment of freight or raw material from points without the State of Illinois to points within the State of Illinois, or from points within the State of Illinois to points without the State of Illinois, or from points without the State of Illinois through the State of Illinois to points without the State of Illinois, or the passage or movement of trains of the plaintiff carrying such interstate commerce.

(11) By violence or threat of violence, molesting or threatening any member of the family of any employee or officer, or by violence or threat of violence or injury coercing any employee or officer of the plaintiff, or damaging the home or residence of any member of the family of any such employee or officer.

1419 (12) Congregating in any group or groups in the vicinity of the plaintiff's property for the purpose or with the intention of committing any act of violence upon any employee or officer of the plaintiff or any one desiring to enter the employ of the plaintiff.

(13) Firing any shot or missile, rock or stone or club at, toward, or against or upon the property of the plaintiff or any employee or officer of the plaintiff or those desiring to enter its employ, or by force or violence damaging the property of the plaintiff or interfering by force or violence with plaintiff's business or its customers and the use and enjoyment by the plaintiff of its said railroad, and the carrying on of its business and the movement of its trains, engines, and cars for the transportation of interstate commerce.

(14) In any way by force or violence or threat of violence interfering with, obstructing or preventing the operation of plaintiff's railroad in the handling of interstate commerce and from in any way by force or violence of threat of force or violence seeking to prevent employees of

the plaintiff or those desiring to enter its employ from continuing and working as employees of the plaintiff.

(15) Violence or threats of violence or damaging or attempting to damage or injure any of the property of the plaintiff used in the transportation of Interstate Commerce including any other property of the plaintiff.

(16) From destroying or attempting to destroy, unlocking, opening or disarranging switches of the plaintiff and damaging, injuring or changing signals on the switch stands of the plaintiff so as to in any way endanger the movement of a train over the tracks of the plaintiff and from damaging, cutting, breaking or interfering with the telegraph system of the plaintiff, or any of other property used in connection with the operation of its trains in the transportation of freight in interstate commerce.

1420 (17) From tampering with, damaging or destroying, or attempting to damage or destroy, any portion of the roadway, ballast, tie and track structure, bridge, culvert, building, signal, telegraph line, locomotive, car, or any other building, structure, piece of machinery or equipment used by plaintiff in its business.

The plaintiff shall file an undertaking with adequate security in an amount in the sum of Five Thousand Dollars (\$5,000.00) conditioned that it recompense those enjoined for any loss, expense, or damage caused by the issuance of this temporary injunction, including all reasonable costs, together with reasonable attorneys' fees and expenses of defense against the granting of this temporary injunction, if it shall be held to have been improvidently granted by the further order of this Court.

Nothing herein contained shall be construed to prevent (1) ceasing or refusing to perform any work to remain in any relation of employment; (2) becoming or remaining a member of any labor organization or of any employer organization regardless of any such undertaking or promise as is described in Section 103 (Act March 23, 1932, Chapter 90, Sec. 3, 47 Stat. 70 (29 U. S. C. A. Par. 103); (3) paying or giving to or withholding from any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance or other moneys or things of value; (4) by all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in or in prosecution of any action or suit in any court of the United States or

in any State; (5) giving publicity to the existence of or the facts involved in any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence; (6) assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute; (7) advising or notifying any person of an intention to do any of the acts heretofore specified in this paragraph; (8) agreeing with any other person to do or not to any of the acts heretofore in this paragraph stated; and (9) advising, urging or otherwise causing or inducing without fraud or violence, the acts heretofore in this paragraph specified, regardless of any such undertaking or promise as is described in Section 103 of this chapter.

Nothing herein shall prevent the defendants from having not to exceed the total of Seven (7) persons act as pickets at each of the points of entrance to the properties and premises of the plaintiff, namely, at Main St., Head of lane and Nickel Plate Crossing in East Peoria and Union Station in Peoria, but said pickets shall be unarmed and shall not carry or display, clubs or other instruments of violence, and shall not at any time resort to violence or threats of violence in preventing or attempting to prevent employees or others entering or leaving the premises of the plaintiff, and said pickets shall not by violence or threat of violence intimidate or attempt to intimidate any person in having free access, ingress and egress to and from the premises of the plaintiff.

(s) J. Leroy Adair,  
*Judge.*

Dated January 19, 1942, at 5 o'clock p. m.

Endorsed: Filed January 19, 1942, at 5 o'clock p. m.  
G. W. Schwaner, Clerk.

1422 And afterwards, to-wit: on the 19th day of January, A. D. 1942, a certain Bond was filed in the office of the clerk of said court and approved by the Court, which said Bond and Approval was and is in the words and figures following, to-wit:

1423 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—P-145) • •

Filed  
Jan. 19,  
1942.

Know All Men By These Presents, That Toledo, Peoria & Western Railroad, as principal, and Geo. P. McNear, Jr., as surety, are held and firmly bound unto the defendants in the above entitled cause in the penal sum of Five Thousand Dollars (\$5000.00), for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns jointly and firmly by these presents.

Witness our hands and seals this 19th day of January, A. D. 1942.

The condition of the above obligation is such that whereas, Toledo, Peoria & Western Railroad as plaintiff in the above entitled cause has filed its complaint against the defendants and has made application to the court for the issuance of a temporary injunction against the defendants pending the hearing of the application for a temporary injunction; and

Whereas, the District Court of the United States for the Southern District of Illinois, Northern Division, has granted its temporary injunction herein pending final hearing in this cause on condition, however, that said plaintiff shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined or restrained for any loss, expense or damage caused by the improvident or erroneous issuance of such temporary injunction, including all reasonable cost (together with a reasonable attorney's fee) and expense of defense incurred by reason of the granting of any injunctive relief sought in this proceeding and subsequently denied by the court.

1424 Now, Therefore, if said Toledo, Peoria & Western Railroad shall well and truly recompense the defendants enjoined or restrained for any loss, expense, or damage incurred by the improvident or erroneous granting of such temporary injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense incurred against such temporary injunction or against the granting of any injunctive relief granted in this proceeding and subsequently denied by the court; then this obliga-

tion to be void, otherwise to remain in full force and effect.

The principal and surety herein submit themselves to the jurisdiction of the court for the purpose of enforcing the conditions of this bond if it shall be held that the granting of the temporary injunction was improvident or erroneous or if the granting of injunctive relief in this proceeding is subsequently denied by the court.

Toledo, Peoria & Western Railroad,

By Geo. P. McNear, Jr. /s/

(Corporate Seal)

*President.*

/s/ Geo. P. McNear, Jr. (Seal)

Attest:

Louis Rider /s/

*Assistant Secretary.*

1425 State of Illinois, }  
County of Peoria. } ss.

I, Esther M. Schulthes, a Notary Public in and for said county and state aforesaid, do hereby certify that Geo. P. McNear, Jr., President of Toledo, Peoria & Western Railroad, and personally known to me to be said officer, appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as the free and voluntary act of said Toledo, Peoria & Western Railroad for the uses and purposes therein set forth.

Given under my hand and notarial seal this 19th day of January, A. D. 1942.

/s/ Esther M. Schulthes,

(Notary Seal)

*Notary Public.*

State of Illinois. }  
County of Peoria. } ss.

I, Esther M. Schulthes, a Notary Public in and for said county and State aforesaid, do hereby certify that Geo. P. McNear, Jr., personally known to me to be the same person who signed the above and foregoing instrument as surety, appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act for the uses and purposes therein set forth.



Given under my hand and notarial seal this 19th day of January, A. D. 1942.

(Notary Public)

/s/ Esther M. Schulthes,  
Notary Public.

1426 State of Illinois, }  
County of Peoria. } ss.

Geo. P. McNear, Jr., being first duly sworn, upon oath, deposes and says that he is the owner of real and personal property in the County of Peoria and State of Illinois of the value in excess of Ten Thousand Dollars (\$10,000.00) over and above all encumbrances, exemptions and liens; that he makes this affidavit for the purpose of qualifying as surety in the above and foregoing bond.

/s/ Geo. P. McNear, Jr.

Subscribed and sworn to before me this 19th day of January, A. D. 1942.

(Notary Seal)

/s/ Esther M. Schulthes,  
Notary Public.

(And on the Back of Said Bond, Appeal the Following:  
1-19-42 Bond approved. /s/ J. Leroy Adair.

Endorsed: Filed Jan. 19, 1942, G. W. Schwaner, Clerk.

1427 And afterwards, to-wit: on the 2nd day of February, A. D. 1942, a certain Order or Rule to Show Cause was filed in the office of the clerk of said court and entered of record in said cause, which said Order was and is in the words and figures following, to-wit:

Entered  
Feb. 2,  
1942.

1428 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—P-149) \* \*

### ORDER OR RULE TO SHOW CAUSE.

On petition of Toledo, Peoria & Western Railroad, plaintiff in the above entitled cause, and the affidavit attached thereto and made a part of said petition, and the sworn statements of Jean L. Dean and Charles Psehrrer attached to said petition, and the affidavits of Fred E. Sidener and William Wheeler, and the record of the arrest

of the said Delmar Newdigate attached to said petition, charging contempt of court against H. J. Dilley, Delmar Newdigate and Paul Brokaw for violation of the temporary injunction heretofore issued herein.

It Is Ordered that the said H. J. Dilley, Delmar Newdigate and Paul Brokaw be and they are hereby ordered and directed to appear before this Court at Peoria, Illinois, on the 10 day of Feb., A. D. 1942 at 2 o'clock P. M., to show cause, if any they have, why they should not be punished for contempt of Court for the violation of the temporary injunction heretofore issued herein on January 19, 1942 as more fully appears from the petition of the Toledo, Peoria & Western Railroad, and the affidavits of William Wheeler and Fred E. Sidener, and the statements of Jean L. Dean and Charles Pschirrer, and the record of the arrest of the said Delmar Newdigate, copies of which are hereby ordered to be served upon the said H. J. Dilley, Delmar Newdigate, and Paul Brokaw.

Dated this 2 day of Feb., A. D. 1942.

/s/ J. Leroy Adair,  
*District Judge.*

Endorsed: Filed Feb. 2, 1942, G. W. Schwaner, Clerk.

Entered  
Feb. 9,  
1942.

1429 And afterwards, to-wit: on the 9th day of February, A. D. 1942, a certain Order Directing United States Marshal to Enforce Provisions of Temporary Injunction was filed in the office of the clerk of said court and entered of record in said cause, which said Order was and is in the words and figures following, to-wit:

1430 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—P-149) \* \*

**ORDER DIRECTING UNITED STATES MARSHAL TO  
ENFORCE PROVISIONS OF TEMPORARY INJUNCTION.**

Before the Honorable J. Leroy Adair, Judge:

This cause now coming on to be heard upon the motion of the Toledo, Peoria & Western Railroad, plaintiff, for an order directing the United States Marshal for the Southern District of Illinois to enforce the provisions of the tempo-

rary injunction heretofore issued on January 19, 1942; and it appearing to the Court that after the issuance of the order for temporary injunction herein on January 19, 1942 a certified copy of said order was duly served upon the defendants and others by the United States Marshal; that notwithstanding the issuance of said order for temporary injunction and the service of a certified copy thereof upon the defendants and others that some of the defendants are refusing to comply with or obey the terms of said temporary injunction, and the Court now being fully advised in the premises, upon consideration thereof

It Is Ordered, Adjudged and Decreed that the United States Marshal for the Southern District be and he is hereby directed to take such steps as may be necessary to enforce the provisions of the temporary injunction heretofore issued herein on January 19, 1942.

1431 It Is Further Ordered that if it becomes necessary that said United States Marshal shall employ additional deputies for the purpose of said temporary injunction.

It is Further Ordered that all expenses in enforcing the provisions of said temporary injunction shall be paid by the plaintiff and taxed as costs in this case.

Enter: Feb. 9th, 1942.

J. Leroy Adair /s/  
Judge.

Endorsed: Filed Feb. 9, 1942. G. W. Schwaner, Clerk.

1432 And afterwards, to-wit: on the 9th day of February, A. D. 1942, a certain Order or Rule to Show Cause was filed in the office of the clerk of said court and entered of record in said cause, which said Order was and is in the words and figures following, to-wit:

Entered  
Feb. 9,  
1942.

1433 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—P-149) \* \*

**ORDER OR RULE TO SHOW CAUSE.**

On petition of the Toleda, Peoria & Western Railroad, plaintiff in the above entitled cause, and affidavit attached thereto and made a part of said petition, and the affidavits

of Charles E. Miller, James E. Lantz and L. Dale Pease attached to said petition and made a part thereof, marked Exhibits "A", "B" and "C" respectively, and the affidavits of Charles E. Miller, James E. Lantz, Richard G. Smith and John A. Kohl attached to said petition and made a part thereof, marked Exhibits "D", "E", "F" and "H", respectively, charging contempt of court against Hustler Wilson for violation of the temporary injunction heretofore issued herein:

It Is Ordered that the said Hustler Wilson be, and he is hereby, ordered and directed to appear before this court at Peoria, Illinois on the 25<sup>th</sup> day of February, A. D. 1942, at 2 o'clock P. M., to show cause, if any he has, why he should not be punished for contempt of court for violation of the temporary injunction heretofore issued herein on January 19, 1942, as more fully appears from the petition of plaintiff and the sworn statements attached thereto, copies of which are hereby ordered to be served upon the said Hustler Wilson.

Dated this 9th day of February, A. D. 1942.

/s/ J. Leroy Adair,  
*District Judge.*

Endorsed: Filed Feb. 9, 1942, G. W. Schwaner, Clerk.

Entered  
Feb. 9,  
1942.

1434 And afterwards, to-wit: on the 9th day of February, A. D. 1942, a certain Order or Rule to Show Cause was filed in the office of the clerk of said court and entered of record in said cause, which said Order was and is in the words and figures following, to-wit:

1435 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—P-149) \* \*

### ORDER OR RULE TO SHOW CAUSE.

On petition of the Toledo, Peoria & Western Railroad, plaintiff in the above entitled cause, and affidavit attached thereto and made a part of said petition, and the sworn statements of Harold B. Crotts, Lawrence H. Howe and Harold E. Kipling attached to said petition and made a part thereof, marked Exhibits "A", "B" and "C", respectively, charging contempt of court against Frank W.

Lucas for violation of the temporary injunction heretofore issued herein:

It Is Ordered that the said Frank W. Lucas be, and he is hereby, ordered and directed to appear before this court at Peoria, Illinois, on the 25th day of February, A. D. 1942, at 2 o'clock P. M., to show cause, if any he has, why he should not be punished for contempt of court for violation of the temporary injunction heretofore issued herein on January 19, 1942, as more fully appears from the petition of plaintiff and the sworn statements attached thereto, copies of which are hereby ordered to be served upon the said Frank W. Lucas.

Dated this 9th day of February, A. D. 1942.

/s/ J. Leroy Adair,  
*District Judge.*

Endorsed: Filed Feb. 9, 1942, G. W. Schwaner, Clerk.

1436 And afterwards, to-wit: on the 9th day of February, A. D. 1942, the following further proceedings were had in said cause and were entered of record, to-wit: Entered  
Feb. 9,  
1942.

1437 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—P-149) \* \*

Monday, February 9, 1942.

Court met pursuant to adjournment.

Present, the Honorable J. Leroy Adair, Judge.

And now on this 9th day of February, A. D. 1942, comes the plaintiff herein by John M. Elliott and Clarence W. Heyl, its attorneys, and come also the defendants herein by Cassidy, Knoblock & Sloan, (by Louis Knoblock), and now the plaintiff presents its Motion for Default of Defendants for Failure to serve or file Answer to Original Complaint or to Complaint as Amended, and the ruling on said motion is hereby reserved by the Court.

It is further ordered by the court that the hearing as to the violations of the Temporary Injunction be set for February 25, 1942, at 2 o'clock p. m.

Entered  
Feb. 10,  
1942.

1438 And afterwards, to-wit: on the 10th day of February, A. D. 1942, the following further proceedings were had in said cause and were entered of record, to-wit:

1439 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* \* (Caption—P-149) \* \*

Tuesday, February 10, 1942.

Court met pursuant to adjournment.

Present, the Honorable J. Leroy Adair, Judge.

And now on this 10th day of February, A. D. 1942, comes the plaintiff herein by John M. Elliott and Clarence W. Hyl, its attorneys, and it is ordered by the Court that rule be and it is hereby entered against all defendants in the Complaint to file an Answer or other Motions on or before February 16, 1942, at 2 o'clock p. m.

Now comes the plaintiff herein and moves the court that notices go to the defendants H. J. Dille, Delmar Newdigate, Paul Brokaw, Hustler Wilson and Frank W. Lucas to show cause why they should not be adjudged in contempt of the Temporary Injunction, and the Court having heard said motion and being fully advised in the premises, it is ordered by the court that said motion be and it is hereby allowed. Trial is set on February 25, 1942, at 2 o'clock p. m.

In accordance with the said order, Notices are hereby sent by the Clerk of this Court to H. J. Dille, Delmar Newdigate, Paul Brokaw, Hustler Wilson and Frank W. Lucas.

1440 And afterwards, to-wit: on the 16th day of February, A. D. 1942, there was filed in the office of the clerk of said court, a certain Defendants' Answer to Complainant's Amended Complaint, which said Answer was and is in the words and figures following, to-wit:



1441 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—P-149). \* \*

Filed  
Feb. 16,  
1942.

**ANSWER TO COMPLAINANT'S AMENDED  
COMPLAINT. .**

Now come the above defendants by Cassidy, Knoblock & Sloan and George Donaldson, their attorneys, and for answer to said complaint state as follows:

(A) That said complaint is insufficient in law and does not state a claim upon which the relief prayed for may be granted for the reason that said complaint does not allege facts showing any jurisdiction of the District Court of the United States over said cause and subject matter therein for the reason that said complaint neither alleges facts showing the diversity of citizenship between the 1442 plaintiff and the defendants nor facts showing that the suit arises under the Constitution or laws of the United States or treaties made, nor are there any other circumstances alleged which give the District Court of the United States jurisdiction of the said cause.

(B) Defendants further answer that said complaint alleges facts showing the said cause rose out of a labor dispute, but complainant's allegations and facts do not show that unlawful acts have been threatened and will be committed or have been committed and will be continued unless restrained, nor are facts alleged showing that substantial and irreparable damage to complainant's property will follow, nor are facts alleged showing that as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon the defendants by the granting of the relief, nor does said complaint allege facts showing that the complainant has no adequate remedy at law, nor are facts alleged showing that the public officials charged with the duty to protect complainant's property are unwilling or unable to furnish that protection, nor are sufficient facts alleged showing that complainant has complied with all of the obligations imposed by law upon it, nor does such complaint allege or show that every reasonable effort to settle said dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration has been made.

(1) All of the above defendants admit that the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, having its principal office in the City of Peoria, Illinois, and that for years past it has been and now is the owner of and is engaged in operating a railroad between Effner, Indiana, and Keokuk, Iowa, through the State of Illinois, with a branch line extending from LaHarpe in Hancock County, Illinois, to Lomax in Henderson County, Illinois, where it connects with The Atchison, Topeka and Santa Fe Railway Company, and also a line of road extending from Hamilton, Illinois, to Warsaw, Illinois; that it has been and now is a common carrier of freight by railroad within the State of Illinois, and into the states of Iowa and Indiana; but these defendants neither admit nor deny that said carriage of freight is done in connection with other roads as these defendants are not possessed with information upon which to form a belief and therefore demand strict proof of the same; however, all of the aforesaid defendants admit that said plaintiff is engaged in the business of transporting freight between points within the State of Illinois and between the State of Illinois and other states, and further admit that it has for many years last past and is now engaged in handling both intra- and interstate traffic. It is further admitted that said plaintiff is engaged in the handling of both inter- and intra-state traffic as a common carrier, and as to each and every one of the remaining allegations contained in paragraph one of plaintiff's complaint, same are hereby expressly denied by all of the defendants herein.

(2) All of the defendants herein further admit that the plaintiff has its principal office in the City of Peoria in the State of Illinois and that its line of railroad extends eastward from Peoria through the Counties of Tazewell, Woodford, MacLean, Livingston, Ford and Iroquois to Effner, Indiana, and extends westward from Peoria through the counties of Peoria, Fulton, McDonough, Hancock and Henderson; and that it is and was at the times hereinafter mentioned and is now a common carrier of freight by railroad, and as to each and all of the other allegations contained in paragraph two of plaintiff's complaint, all of the defendants herein expressly deny the truth and accuracy of same.

(3) All of the defendants herein admit that the

plaintiff is a common carrier subject to the Railway Labor Act of the United States as amended, but as to each and all of the remaining allegations contained in paragraph three of plaintiff's complaint all of the said defendants herein expressly deny the truth and the accuracy of same.

(4) All of the defendants herein admit that the plaintiff has established and now maintains and operates a railroad extending from Effner, Indiana through the State of Illinois with various branches or spur lines connecting with other railroads, and also established and now maintains and operates station facilities at various cities and villages located upon its line of road; and that it has also established and now maintains and operates large terminal facilities in the City of East Peoria, Illinois and adjacent territory, including terminal facilities, round house, machine shops, yards, turntable, repair shops, blacksmith shops, and all other terminal facilities required for its use in handling its business as a common carrier, but as to each and all of the other allegations contained in paragraph four of plaintiff's complaint, all of the defendants herein expressly deny the truth and the accuracy of same.

(5) The Brotherhood of Railroad Trainmen, referred to by plaintiff as the BRT admits that it is a voluntary labor organization and F. W. Coyle is its vice president, and the defendant, Brotherhood of Locomotive Firemen and Enginemen, referred to by the plaintiff as the B. of L. F. & E., admits that it is a voluntary labor organization and that W. C. Keiser is its vice president, and it is admitted by Enterprise Lodge #27 of the Brotherhood of Railroad Trainmen that it is the Peoria representative of said Brotherhood, and it is admitted by the Robert Mason Lodge #926 of the Brotherhood of Locomotive

Firemen and Enginemen that it is the Peoria representative of said Brotherhood, and it is admitted by all of the remaining defendants that they are now on a strike, but each and all of the above stated defendants deny that they should be made parties defendant to this said cause.

(6) All of the defendants herein neither admit nor deny the truth and the accuracy of the allegations contained in paragraph six of the plaintiff's complaint for the reason that they do not have knowledge or information sufficient to form a belief upon the truth of said allegations and demand strict proof of the same.

(7) All of the defendants herein admit the truth and

the accuracy of the allegations contained in paragraph seven of plaintiff's complaint.

(8) All of the defendants herein admit the truth and the accuracy of the allegations contained in paragraph eight of plaintiff's complaint.

(9) The defendants Brotherhood of Railroad Trainmen and Brotherhood of Railroad Trainmen Enterprise Lodge #27, being the representative of said Brotherhood, admit the truth and accuracy of the allegations contained in paragraph nine of plaintiff's complaint but all of the other defendants herein neither admit nor deny the truth and the accuracy of said allegations contained in paragraph nine of plaintiff's complaint for the reason that they are not possessed of sufficient knowledge upon which to form a belief as to the truth and accuracy of same and therefore demand strict proof of same.

(10) The defendants Brotherhood of Railroad Trainmen and Brotherhood of Railroad Trainmen Enterprise Lodge #27, being the local representative of said Brotherhood, admit the truth and accuracy of the allegations contained in paragraph ten of plaintiff's complaint, but all of the remaining defendants herein neither admit 1446 nor deny the truth and accuracy of the same for the reason that they are not possessed with sufficient knowledge or information upon which to form a belief as to the truth and accuracy of said allegations and therefore said remaining defendants demand strict proof of the same.

(11) The Brotherhood of Locomotive Firemen and Enginemen and Brotherhood of Locomotive Firemen and Enginemen Robert AMason Lodge #926 admit the truth and the accuracy of the allegations contained in paragraph 11 of plaintiff's complaint, but all of the remaining defendants herein neither admit nor deny the truth or the accuracy of said allegations contained in plaintiff's complaint for the reason that they are not possessed with sufficient knowledge upon which to form an opinion or belief and therefore demand strict proof of the same.

(12) The Brotherhood of Locomotive Firemen and Enginemen and Brotherhood of Locomotive Firemen and Enginemen Robert Mason Lodge #926 admit the truth and the accuracy of the allegations contained in paragraph 12 of plaintiff's complaint, but all of the remaining defendants herein neither admit nor deny the truth and accuracy of said allegations contained in paragraph 12 of

plaintiff's complaint for the reason that they are not possessed with sufficient knowledge to form an opinion or belief as to the truth and accuracy of said allegations, therefore all of the said remaining defendants demand strict proof of same.

(13) The truth and the accuracy of the allegations contained in paragraph 13 of plaintiff's complaint are admitted by the said defendants, Frank W. Coyle, vice president of the Brotherhood of Railroad Trainmen and W. C. Keiser, vice president of the Brotherhood of Locomotive Firemen and Enginemen, and successor to C. H. Kennan, former vice president of the Brotherhood of Locomotive

Firemen and Enginemen, however said defendants, 1447 F. W. Coyle and W. C. Keiser wish to further state

that under the provisions of the Railway Labor Act which said provisions were applicable to the dispute then and there existing between the said plaintiff and said Brotherhoods who were the duly and legally elected bargaining agents for the said employees of the plaintiff as aforesaid, that it became necessary that they invoke the services of the National Mediation Board or that the proposed change in rate schedules, rules and working conditions as proposed by the plaintiff would have gone into full force and effect, and that said defendants had no alternative to pursue other than to invoke the services of the Mediation Board or submit to the intolerable proposals of the plaintiff as aforesaid. All of the remaining defendants herein, except the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen, neither admit nor deny the truth and the accuracy of the allegations contained in paragraph 13 of plaintiff's complaint for the reason that they are not possessed with sufficient knowledge to form a belief as to the truth and accuracy of same, therefore they demand strict proof of same.

(14) The Brotherhood of Railroad Trainmen and F. W. Coyle, vice president of the Brotherhood of Railroad Trainmen, and the Brotherhood of Locomotive Firemen and Enginemen and W. C. Keiser, its vice president, admit the truth and accuracy of the statements contained in paragraph 14 of plaintiff's complaint, but all of the remaining defendants neither admit nor deny the truth and the accuracy of the statements contained in said paragraph for the reason that they are not possessed with sufficient knowl-

edge or information to form a belief thereof, and therefore demand strict proof of the same.

(15) Defendants Brotherhood of Railroad Trainmen and F. W. Coyle, its vice president, and Brotherhood of Locomotive Firemen and Enginemen and W. C. 1448 Keiser, its vice president, admit the truth and the accuracy of the statements contained in paragraph 15 of plaintiff's complaint, however the remaining of said defendants neither admit nor deny the truth and the accuracy of such allegations for the reason that they do not have sufficient information to form a belief and demand strict proof thereof.

(16) The defendants, Brotherhood of Railroad Trainmen and F. C. Coyle, its vice president, and Brotherhood of Locomotive Firemen and Enginemen and W. C. Keiser, its vice president, admit the truth and accuracy of statements contained in paragraph 16 of plaintiff's complaint, but all of the remaining defendants herein neither admit nor deny the truth and the accuracy of the same for the reason that they do not possess sufficient knowledge upon which to form a belief and therefore demand strict proof of same.

(17) The defendants deny the allegations contained in paragraph 17 of plaintiff's complaint.

(18) The defendants deny the statements contained in paragraph 18 of plaintiff's complaint.

(19) Defendants deny the statements contained in paragraph 19 of plaintiff's complaint.

(20) Defendants deny the allegations contained in paragraph 20 of plaintiff's complaint.

(21) Defendants deny the allegations contained in paragraph 21 of plaintiff's complaint.

(22) Defendants deny the allegations contained in paragraph 22 of plaintiff's complaint.

(22½) Defendants, Brotherhood of Railroad Trainmen and F. W. Coyle, its vice president, and Brotherhood of Locomotive Firemen and Enginemen and C. W. Keiser, its vice president, admit that the plaintiff requested the National Mediation Board to recommend the President of the United States to appoint an emergency board and fact-finding body to act in the dispute existing between 1449 the plaintiff and the defendant, but all of the defendants deny that same was made in good faith and in fact state that same was made in bad faith by said plaintiff, and it is evident by a letter written by the president,



George P. McNear, Jr., of the plaintiff corporation, in which it was admitted and stated by the said George P. McNear, Jr., president of the Plaintiff, that they would not be bound by the recommendations and findings of the said emergency board, and that such request on the part of the plaintiff was merely for the purpose of further delay, procrastination, avoidance and evasions of the issues involved in the said dispute.

(23) Defendants Brotherhood of Railroad Trainmen and F. W. Coyle, its vice president, and Brotherhood of Locomotive Firemen and Enginemen and W. C. Keiser, its vice president, admit the truth and the accuracy of the allegations contained in paragraph 23 of plaintiff's complaint, but the remainder of the defendants neither admit nor deny the truth and accuracy of the allegations for the reason that they do not possess sufficient knowledge upon which to form a belief and therefore demand strict proof of same.

(24) Defendants deny the allegations contained in paragraph 24 of plaintiff's complaint.

(25) Defendants deny the allegations contained in paragraph 25 of plaintiff's complaint.

(26) Defendants deny the allegations contained in paragraph 26 of plaintiff's complaint.

(27) Defendants deny the allegations contained in paragraph 27 of plaintiff's complaint.

(28) Defendants deny the allegations contained in paragraph 28 of plaintiff's complaint.

(29) Defendants deny the allegations contained in paragraph 29 of plaintiff's complaint.

(30) Defendants deny the allegations contained in paragraph 30 of plaintiff's complaint.

(31) Defendants deny the allegations contained in paragraph 31 of plaintiff's complaint.

(32) Defendants deny the allegations contained in paragraph 32 of plaintiff's complaint.

(33) Defendants deny the allegations contained in paragraph 33 of plaintiff's complaint.

(34) Defendants deny the allegations contained in paragraph 34 of plaintiff's complaint.

(35) Defendants deny the allegations contained in paragraph 35 of plaintiff's complaint.

(36) Defendants deny the allegations contained in paragraph 36 of plaintiff's complaint.

(37) Defendants deny the allegations contained in paragraph 37 of plaintiff's complaint.

(38) Defendants deny the allegations contained in paragraph 38 of plaintiff's complaint.

(39) Defendants deny the allegations contained in paragraph 39 of plaintiff's complaint.

(39½) Defendants deny the allegations contained in paragraph 39½ of plaintiff's complaint.

(40) Defendants deny the allegations contained in paragraph 40 of plaintiff's complaint.

(41) Defendants deny the allegations contained in paragraph 41 of plaintiff's complaint.

(42) Defendants deny the allegations contained in paragraph 42 of plaintiff's complaint.

(43) Defendants deny the allegations contained in paragraph 43 of plaintiff's complaint.

(44) Defendants deny the allegations contained in paragraph 44 of plaintiff's complaint.

(45) Defendants deny the allegations contained in 1451 paragraph 45 of plaintiff's complaint.

(46) Defendants deny the allegations contained in paragraph 46 of plaintiff's complaint.

(47) Defendants deny the allegations contained in paragraph 47 of plaintiff's complaint.

(48) Defendants deny the allegations contained in paragraph 48 of plaintiff's complaint.

(49) Defendants' Brotherhood of Railroad Trainmen and F. W. Coyle, its vice president, and Brotherhood of Locomotive Firemen and Enginemen and W. C. Keiser, its vice president, and J. L. Fueger, H. E. Cole, O. W. Kirk, C. H. Kirk, Clinton Stetler, and K. A. Feldt, originally defendants herein, have caused their answer to plaintiff's complaint to be filed even though they have been dismissed by order of the Court because of a certain stipulation entered into in said cause by their attorneys wherein it was agreed that answers would be filed in behalf of each of all of the defendants named in plaintiff's original complaint. The defendants Brotherhood of Railroad Trainmen Enterprise Lodge #27 and Brotherhood of Locomotive Firemen and Enginemen Robert Mason Lodge #926 have also caused their answers to be filed in this said cause for the reason that said defendants were named as additional party defendants by the plaintiff herein prior to the order of the court.

Wherefore all of the said Defendants of this said cause

respectfully pray this Honorable Court to dismiss plaintiff's complaint and all amendments thereto and that all of said defendants may be allowed to go hence without day, and that all costs be assessed against the plaintiff.

/s/ Cassidy, Knoblock & Sloan,

/s/ George Donaldson.

Endorsed: Filed Feb. 16, 1942, G. W. Schwaner, Clerk.

1452 And afterwards, to-wit: on the 17th day of February, A. D. 1942, the following further proceedings were had in said cause in said court and were entered of record, to-wit:

Entered  
Feb. 17,  
1942.

1453 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—P-149) • •

Tuesday, February 17, 1942.

Court met pursuant to adjournment.

Present, the Honorable J. Leroy Adair, Judge.

Come now the defendants in open court and file their Notice of Appeal, and deposit with the Clerk of this Court, the sum of \$250.00 cash bond on appeal for costs and \$2.50 as the Clerk's registry fee for custody of cash bond.

1454 And afterwards, to-wit: on the 17th day of February, A. D. 1942, there was filed in the office of the clerk of said court in said cause, a certain Notice of Appeal by the Defendants, which said Notice of Appeal was and is in the words and figures following, to-wit:

Filed  
Feb. 17,  
1942.

1455 APPEAL FROM THE DISTRICT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF

ILLINOIS, NORTHERN DIVISION TO THE

CIRCUIT COURT OF APPEALS FOR

THE SEVENTH CIRCUIT.

Toledo, Peoria & Western Rail-  
road,

*Plaintiff-Appellee,*

*vs.*

The Brotherhood of Railroad  
Trainmen, Enterprise Lodge  
#27, and Brotherhood of Loco-  
motive Firemen and Enginemen,  
Robert Mason Lodge #926, and  
W. J. Christoff, J. J. Gimming,  
Garland F. Brown, W. L. Brown,  
C. S. Gabbert, Hustler Wilson,  
Carl Roskamp, George Kneisley,  
Verd Kirk, H. J. Siebenthal,  
Herman Reiman, G. L. Under-  
wood, A. R. Overacker, H. O.  
Todd, Walter McMullen, W. E.  
Causey, Walter Kohtz, C. L.  
Brown, H. J. Dilley, Frank W.  
Lucas, Leo Totten, Delmar  
Newdigate and Arthur Brewster,  
*Defendants-Appellants.*

No. P-149.

### NOTICE OF APPEAL.

Notice is hereby given that the Brotherhood of Railroad Trainman, Enterprise Lodge #27, and Brotherhood of Locomotive Firemen and Enginemen, Robert Mason Lodge #926, and W. J. Christoff, J. J. Gimming, Garland F. Brown, W. L. Brown, C. S. Gabbert, Hustler Wilson, Carl Roskamp, George Kneisley, Verd Kirk, H. J. Siebenthal, Herman Reiman, G. L. Underwood, A. R. Overacker, H. O. Todd, Walter McMullen, W. E. Causey, Walter Kohtz, C.

L. Brown, H. J. Dilley, Frank W. Lucas, Leo Totten, Delmar Newdigate and Arthur Brewster, defendants above named, hereby appeal to the Circuit Court of Appeals for the 7th Circuit from the order of the District Court entered in this cause on January 3rd, 1942 allowing a temporary restraining order, and also from the order of the District Court entered January 15, 1942 denying the motion of defendants at the close of plaintiff's evidence introduced on the hearing for temporary injunction, to vacate the order entered on January 8th, 1942 extending the temporary restraining order to January 17th, 1942, to dismiss the complaint and to deny the application of plaintiff for a temporary injunction; and also from the order of the District Court entered on January 19, 1942 at the close of all the evidence introduced on the hearing for temporary injunction, denying the motion of defendants to vacate the order entered on January 8th, 1942, extending the temporary restraining order to January 17th, 1942 and the order entered on January 16th, 1942 extending the temporary restraining order to January 19th, 1942 and to dismiss the complaint and to deny the application of plaintiff for a temporary injunction; and also from the order of the District Court entered January 19th, 1942 allowing a temporary injunction in favor of plaintiff and against these defendants restraining them from certain acts set forth in said order.

/s/ George Donaldson,  
/s/ Cassidy, Knoblock & Sloan,  
*Attorneys for Defendants.*

Endorsed: Filed Feb. 17, 1942, G. W. Schwaner, Clerk.

1457 And afterwards, to-wit: on the 24th day of February, A. D. 1942, the following further proceedings were had in said cause and were entered of record, to-wit:

Entered  
Feb. 24,  
1942.

1458 IN THE DISTRICT COURT OF THE UNITED STATES.  
\* \* (Caption—P-149) \* \*

Tuesday, February 24, 1942.

Court met pursuant to adjournment.

Present, the Honorable J. Leroy Adair, Judge.

And now on this 24th day of February, A. D. 1942, comes the plaintiff herein by John M. Elliott and Clarence W. Heyl, its attorneys, and now comes A. M. Fitzgerald and enters his appearance as attorney for the defendants H. J. Dilley and Paul Brokaw; comes Charles M. Hay and enters his appearance for Hustler Wilson; and come Miller & Hornbeck and enter their appearances as attorneys for Delmar Newdigate and Frank W. Lucas. Now this cause comes on for hearing on the defendants' motions for continuance of the hearing on violations of the Temporary Injunction set for February 25, 1942, and the court having heard said motions and being fully advised in the premises, it is ordered by the court that said motions be and they are hereby allowed, and this cause is hereby continued.

It is further ordered by the court that this case be set for hearing on Monday, March 9, 1942, at 2 o'clock p. m.

Filed  
Apr. 21,  
1942.

1459 And afterwards, to-wit: on the 21st day of April, A. D. 1942, there was filed in the office of the clerk of said court certain Points Relied on by Defendants for Reversal on Appeal; which said Points were and are in the words and figures following, to-wit:

1460 DISTRICT COURT OF THE UNITED STATES.  
\* \* (Caption—P-149) \* \*

### POINTS RELIED ON BY DEFENDANTS FOR REVERSAL ON APPEAL.

Now come defendants-appellants and make the following statement of Points relied on by defendants for reversal on appeal:

(1) The District Court erred in granting the temporary restraining order because there was no allegation in the



complaint of ultimate and competent facts showing that the District Court had jurisdiction of the subject matter of the cause since there were no allegations of ultimate and competent facts showing that there was any diversity of citizenship between plaintiffs and defendants or that the cause arose under the Constitution or laws of the United States or treaties made or that there existed any other jurisdictional grounds provided by Title 28, Section 41, U. S. C. A. or otherwise.

(2) The District Court erred in granting a temporary restraining order to plaintiff because the complaint alleged facts showing it involved or grew out of a labor dispute and there was no allegation or proof of facts showing that plaintiff had not failed to comply with any obligation imposed by law which was involved in the labor dispute in question or that plaintiff had not failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

(3) The District Court erred in granting a temporary restraining order because there was not made and filed prior to its issuance a proper finding of facts.

(4) The District Court erred in granting the temporary restraining order because the order granted more extensive relief than the specific act or acts expressly complained of in the complaint.

(5) The District Court erred in granting a temporary restraining order without notice because there was no sufficient testimony under oath or showing of such circumstances as required dispensing with notice or such as to justify the Court in issuing a temporary injunction upon a hearing after notice.

(6) The District Court erred in entering an order January 8th, 1942 extending and continuing in force until January 17th, 1942 the temporary restraining order entered January 3rd, 1942 because Title 29, U. S. C. A. § 107 limits the duration and effectiveness of such order to five days and the Court is without power to grant a longer order.

(7) The District Court erred in entering an order January 15th, 1942 extending and continuing in force until January 19th, 1942 the temporary restraining order entered January 3rd, 1942 and extended by order of January 8th, 1942 to January 15th, 1942 because Title 29, U. S. C. A. § 107 limits the duration and effectiveness of such order to

five days and the Court is without power to grant a longer order.

(8) The District Court erred in denying the motions of defendants to dismiss plaintiff's complaint because the complaint although showing that it involved or grew out of a labor dispute did not allege facts showing;

1462 (a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law;

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection;

(f) That plaintiff had not failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or that plaintiff had not failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

(9) The District Court erred in denying the motions of defendants to dismiss the complaint because there was no allegation in the complaint of ultimate and competent facts showing that the District Court had jurisdiction of the subject matter of the cause since there were no allegations of ultimate and competent facts showing that there was any diversity of citizenship between plaintiffs and defendants or that the cause arose under the Constitution or laws of the United States or treaties made or that there existed any other jurisdictional grounds provided by Title 28, Section 41, U. S. C. A. or otherwise.

(10) The District Court erred in denying the motions of defendants made at the close of plaintiff's evidence and again at the close of all of the evidence on the hearing for a temporary injunction to vacate the order entered January 8th, 1942 extending the temporary restraining order to January 17th, 1942 because Title 29, U. S. C. A. § 107 limits the duration and effectiveness of such order to five days and the Court was without power to grant a longer order.

1463 (11) The District Court erred in denying the motions of defendants made at the close of plaintiff's evidence and again at the close of all of the evidence on the hearing for a temporary injunction to deny the application of plaintiff for a temporary injunction, because the complaint did not allege ultimate facts and the evidence did not show facts proving that the District Court had jurisdiction of the subject matter of the cause since there were no allegations in the complaint or evidence on the hearing of ultimate and competent facts showing that there was any diversity of citizenship between plaintiffs and defendants or that the cause arose under the Constitution or laws of the United States or treaties made or that there existed any other jurisdictional grounds provided by Title 28, Section 41, U. S. C. A., or otherwise.

(12) The District Court erred in denying the motions of defendants made at the close of plaintiff's evidence and again at the close of all the evidence to deny the application of plaintiff for a temporary injunction because there was no evidence tending to prove;

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law;

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection;

(f) That plaintiff had not failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or that plaintiff had not failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

1464 (13) The District Court erred in entering the order allowing a temporary injunction in favor of plaintiff and against defendants because the District Court had no jurisdiction of the subject matter of the cause since there was no diversity of citizenship between plaintiff and defendants nor did the cause arise under the Constitution

or laws of the United States or treaties made nor did there exist any other jurisdictional grounds provided by Title 28, Section 41, U. S. C. A., or otherwise.

(14) The District Court erred in entering the order allowing a temporary injunction in favor of plaintiff and against defendants because it was against the manifest weight of the evidence for it to find;

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law;

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection;

(f) That plaintiff had not failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or that plaintiff had not failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

George Donaldson,

Cassidy, Knoblock & Sloan,

*Attorneys for Defendants-appellants.*

Endorsed: Filed April 21, 1942, G. W. Schwaner, Clerk.

1465 And afterwards, to-wit: on the 18th day of February, A. D. 1942, the return of the Clerk of this Court showing the mailing of a copy of the Notice of Appeal to all Attorneys of Record was entered on the Docket in said cause, which said Return was and is in the words and figures following, to-wit:

1466 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—P-149) \* \*

Civil Docket No. 1—Page 243.

Feb. 18, 1942—Copies of Notice of Appeal mailed to John M. Elliott, Alliance Life Bldg., Peoria, Ill.; Clarence W. Heyl, Central National Bank Bldg., Peoria, Ill.; George Donaldson, 113 E. Washington St., East Peoria, Ill.; and Cassidy, Knoblock & Sloan, Jefferson Bldg., Peoria, Ill.

1467 And afterwards, to-wit: on the 25th day of March, A.D. 1942, a certain Motion and Order for Extension of Time to file Record in Circuit Court of Appeals was filed in the office of the clerk of said court and said Order was entered of record, which said Motion and Order were and are in the words and figures following, to-wit:

Filed  
Mar. 25,  
1942.

1468 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—P-149) \* \*

### MOTION.

Now come the defendants-appellants by their attorneys and moves this Honorable District Court of the United States to enter an order by authority of sub-paragraph (g) of Rule 73 of Rules of Civil Procedure for the District Courts of the United States, extending the time for filing the record on appeal in this cause and docketing the action, up to and including May 16th, 1942.

In support of this motion is is represented that on February 17th, 1942 these defendants-appellants filed a notice of appeal from the order of this court granting a temporary injunction and other orders in this cause and that the order granting the temporary injunction against these defendants-appellants was entered on January 19th, 1942.

It is also represented that following the filing of said notice of appeal counsel for these defendants-appellants requested the official reporter of this court, one Mary Reynolds, to prepare the transcript of the evidence heard during the trial which trial extended for more than a

week. It is represented that said official reporter has proceeded with such preparation of the transcript and has now completed more than 1000 pages but that said reporter has advised that a great deal of said evidence is still to be transcribed and cannot be done within the 1469 time for filing the record, i.e., March 27th, 1942 because said official reporter is engaged in the recording of testimony and evidence in a trial now proceeding in the District Court of the United States.

It is represented that since such transcript is an essential part of the transcript of evidence to be filed under Rule 75 of Rules of Civil Procedure it is not possible to file such record within the time required and that the extension for filing such record as prayed is necessary to perfect said appeal.

Brotherhood of Railroad Trainmen, Enterprise Lodge #27, Brotherhood of Locomotive Firemen and Enginemen, Robert Mason Lodge #926, W. Y. Christoff, J. J. Gimming, Garland F. Brown, Wl. L. Brown, C. S. Gabbert, Hustler Wilson, Carl Roskamp, George Kneisley, Verd Kirk, H. J. Siebenthal, Herman Rieman, G. E. Underwood, A. R. Overacker, H. O. Todd, Walter McMullen, W. E. Causey, Walter Kohtz, C. L. Brown, H. J. Dilley, Frank W. Lucas, Leo Totten, Delmar Newdigate, and Arthur Brewster,

By /s/ Cassidy, Knoblock & Sloan,  
*Their attorneys.*

Endorsed: Filed Mar. 25, 1942, G. W. Schwaner, Clerk.

Entered  
Mar. 25,  
1942.

1470 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—P-149) \* \*

### ORDER.

This cause having been presented to the Court upon motion of defendants-appellants for an order to extend the time in which to file the record on appeal and docket the action and the court having found that good cause has been shown for such extension orders under the authority



of sub-paragraph (g) of Rule 73 of the Rules of Civil Procedure that the time of filing the record on appeal and docketing the action by said defendants-appellants shall and is hereby extended to and including May 16th, 1942.

/s/ J. Leroy Adair,

*Judge.*

Endorsed: Filed Mar. 25, 1942, G. W. Schwaner, Clerk.

1471 And afterwards, to-wit: on the 5th day of March, A. D. 1942, there was filed in the office of the clerk of said court, a certain Request for Portions of Record for Preliminary hearing in Circuit Court of Appeals, which said Request was and is in the words and figures following, to-wit:

Filed  
Mar. 5,  
1942.

1472 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—P-149) \* \*

**REQUEST FOR PORTIONS OF RECORD FOR PRELIMINARY HEARING IN CIRCUIT COURT OF APPEALS.**

The Clerk of the Court is here requested to certify the following portions of the record in this cause under Rule 75 (j) of the Rules of Civil Procedure for Preliminary Hearing in the Circuit Court of Appeals.

- (1) Appropriate placitas.
- (2) Complaint and amendment to complaint.
- (3) Answer to complaint.
- (4) Motions of defendants-appellants made at the close of plaintiff's evidence on the hearing for a temporary injunction and at the close of all the evidence on such hearing.
- (5) Order of Court denying such motions.
- (6) Order of Court allowing temporary injunction.
- (7) Orders of Court that individuals therein named show cause why they should not be held in contempt.
- (8) Order of Court extending hearing on such rule to March 9th, 1942.
- (9) Notice of appeal and cost bond and return of Clerk showing mailing.

(10) Request for portions of record for preliminary hearing, in the Circuit Court of Appeals.

George Donaldson,  
Cassidy, Knoblock & Sloan,  
*Attorneys for Defendants.*

Endorsed: Filed March 5, 1942, G. W. Schwaner, Clerk.

Filed  
Apr. 21,  
1942.

1473 And afterwards, to-wit: on the 21st day of April, A. D. 1942, there was filed in the office of the clerk of said court a certain Designation of Contents of Record on Appeal, which said Designation was and is in the words and figures following, to-wit:

1474 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—P-149) \* \*

### DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

Now comes the defendants-appellants herein and designate the following as the contents of the record on appeal:

1. All appropriate placitas.
2. Complaint filed January 3rd, 1942.
3. Bond filed January 3rd, 1942.
4. Finding of facts on application for temporary restraining order filed January 3rd, 1942.
5. Temporary restraining order entered January 3rd, 1942.
6. Order entered January 8th, 1942 extending and continuing in force temporary restraining order until January 17th, 1942.
7. Amendment to complaint filed January 15th, 1942.
8. Motion of defendants filed January 15th, 1942 at close of plaintiff's evidence on hearing for temporary injunction to vacate order of court entered January 8th, 1942 extending temporary restraining order to January 17th, 1942; to dismiss complaint herein filed and to deny application of plaintiff for a temporary injunction. Order of court denying said motion entered January 15th, 1942.
9. Order entered January 16th, 1942 extending and continuing in force the temporary restraining order until January 19th, 1942.

1475 10. Motions of defendants filed January 19th, 1942 at the close of all the evidence on the hearing for temporary injunction to vacate order entered on January 8th, 1942 extending the temporary restraining order to January 17th, 1942 and the order entered January 16th, 1942, extending the temporary restraining order to January 19th, 1942, to dismiss the complaint herein filed and to deny application of plaintiff for a temporary injunction. Order of court denying said motion entered January 19th, 1942.

11. Bond filed January 19th, 1942.

12. Order permitting Amendment to Complaint on face thereof made January 19th, 1942, as shown in item 10.

13. Findings of fact and conclusions of law made and filed January 19th, 1942.

14. Order for temporary injunction entered January 19th, 1942.

15. Order of Court that rule is made on defendants to file answer or other motions on or before February 16th, 1942 at 2 P. M.

16. Answer of defendants to complaint filed February 16th, 1942.

17. Notice of appeal filed on February 17th, 1942.

18. Cost bond filed February 17th, 1942.

19. Return of Clerk showing mailing of notice of appeal on February 18th, 1942.

20. Order of Court entered March 25th, 1942 extending time for filing record on appeal.

21. Reporter's transcript of the evidence taken on the hearing for the temporary injunction.

22. Points relied on by defendants for reversal on appeal.

23. Designation of contents of record on appeal.

24. Certificate of Clerk as to authenticity of the record

George Donaldson,

Cassidy, Knoblock & Sloan,

*Attorneys for Defendants-  
appellants.*

Endorsed: Filed April 21, 1942, G. W. Schwaner, Clerk.

Filed  
Apr. 27,  
1942.

1476 And afterwards, to-wit: on the 27th day of April A. D. 1942, there was filed in the office of the clerk of said court, a certain Petition for an Order Directing the Clerk of the District Court to send Plaintiff's Original Exhibits to Clerk of Circuit Court of Appeals, which said Petition was and is in the words and figures following, to-wit:

1477 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—P-149) • •

**PETITION FOR AN ORDER DIRECTING THE CLERK  
OF THE DISTRICT COURT TO SEND PLAINTIFF'S  
ORIGINAL EXHIBITS IN THIS CASE TO CLERK  
OF CIRCUIT COURT OF APPEALS.**

Now comes Toledo, Peoria & Western Railroad, plaintiff-appellee herein, and shows to the court that plaintiff's original exhibits numbers 1 to 31, both inclusive, constitute material, competent, and revelant evidence in this cause, and that said original exhibits should be forwarded by the Clerk of the District Court to the Clerk of the Circuit Court of Appeals, in lieu of copies thereof, for inspection by said Circuit Court of Appeals; that said original exhibits should be forwarded to the Clerk of the Circuit Court of Appeals with the record in this cause.

Wherefore, plaintiff-appellee prays that an order may be entered herein directing the Clerk of the District Court to forward plaintiff's original exhibits numbers 1 to 31, both inclusive, to the Clerk of the Circuit Court of Appeals with the record herein for inspection by said Circuit Court of Appeals in lieu of copies thereof.

John M. Elliott,

Clarence W. Heyl,

*Attorneys for Plaintiff-Appeller.*

Endorsed: Filed April 27, 1942, G. W. Schwaner, Clerk.

1478 And afterwards, to-wit: on the 27th day of April, A. D. 1942, a certain Order Directing that Plaintiff's Original Exhibits be Forwarded to the Clerk of the Circuit Court of Appeals in Lieu of Copies was filed in the office of the clerk of said court and entered of record in said cause, which said Order was and is in the words and figures following, to-wit:

Entered  
Apr. 27,  
1942.

1479 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—P-149) \* \*

ORDER DIRECTING THAT PLAINTIFF'S ORIGINAL EXHIBITS BE FORWARDED TO THE CLERK OF THE CIRCUIT COURT OF APPEALS IN LIEU OF COPIES.

This cause now coming on to be heard upon the petition of plaintiff-appellee that the plaintiff's original exhibits numbers 1 to 31, both inclusive, in lieu of copies thereof, be forwarded by the Clerk of the District Court of the Clerk of the Circuit Court of Appeals for inspection by said Circuit Court of Appeals.

Upon Consideration Thereof, It Is Ordered that the Clerk of the District Court forward plaintiff's original exhibits numbers 1 to 31, both inclusive, in lieu of copies thereof, to the Clerk of the Circuit Court of Appeals for inspection by the Circuit Court of Appeals; that said original exhibits shall be forwarded with the record in this case and that the cost of transportation thereof shall be charged as costs in this case; that upon the final determination of this cause in the Circuit Court of Appeals that original exhibits be returned to the Clerk of this Court.

J. Leroy Adair, *Judge* /s/

Endorsed: Filed April 27, 1942, G. W. Schwaner, Clerk.

1480 And afterwards, to-wit: on the 30th day of April, A. D. 1942, there was filed in the office of the clerk of said Court, a certain Designation of Additional Portions of Record on Appeal, which said Designation of Additional Portions was and is in the words and figures, following, to-wit:

Filed  
Apr. 30,  
1942.

1481

DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—P-149) \* \*

DESIGNATION OF ADDITIONAL PORTIONS OF  
RECORD ON APPEAL.

Now comes Toledo, Peoria & Western Railroad, plaintiff-appellee herein, and designates the following additional portions of contents of the record on appeal:

(1) Order entered January 5, 1942 directing service of notice on public officials of application for temporary injunction, together with the certificate of the Clerk of the District Court showing mailing of printed certified copy of Temporary Restraining Order to each of the public officials named in said Order on January 5, 1942.

(2) Order of Court entered February 9, 1942 directing United States Marshal to enforce the provisions of the temporary injunction granted January 19, 1942.

(3) Petition and order of court directing that plaintiff-appellee's original Exhibits numbers 1 to 31, both inclusive, be forwarded to the Clerk of the Circuit Court of Appeals for inspection in lieu of copies.

The clerk will please include the above mentioned order entered January 5, 1942 together with certificate showing service of certified printed copy of Temporary Restraining Order on public officials named in Order of January 5, 1942; also, order of February 9, 1942 directing United States Marshal to enforce the provisions of the temporary injunction granted January 19, 1942; also, petition and order directing the Clerk to forward original exhibits Numbers 1 to 31, both inclusive, of plaintiff-appellee to the Clerk of the Circuit Court of Appeals.

/s/ John M. Elliott,

/s/ Clarence W. Heyl,

*Attorneys for Plaintiff-Appellee.*

Endorsed: Filed Apr. 30, 1942. G. W. Schwaner, Clerk.

1483 And afterwards, to-wit: on the 2nd day of May, A. D. 1942, there was filed in the office of the clerk of said court, a certain Notice of Plaintiff-Appellee's Attorneys, which said Notice was and is in the words and figures following, to-wit:



1484 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—P-149) • •

Filed  
May 2,  
1942.

NOTICE OF PLAINTIFF-APPELLEE'S ATTORNEYS.

Now comes Toledo, Peoria & Western Railroad, Plaintiff-Appellee, and shows that its attorneys of record are John M. Elliott, 1401 Alliance Life Building, Peoria, Illinois, and Clarence W. Heyl, 807 Central National Bank Building, Peoria, Illinois.

Toledo, Peoria & Western Railroad,  
*Plaintiff-Appellee,*

By /s/ John M. Elliott,  
/s/ Clarence W. Heyl,  
*Attorneys for Plaintiff-Appellee.*

John M. Elliott,  
1401 Alliance Life Building,  
Peoria, Illinois,  
and  
C. W. Heyl,  
807 Central National Bank Building,  
Peoria, Illinois,  
*Attorneys for Plaintiff-Appellee.*

Endorsed: Filed May 2, 1942. G. W. Schwaner, Clerk.

1485 United States of America, }  
Southern District of Illinois, } ss:  
Northern Division. }

I, G. W. Schwaner, Clerk of the United States District Court in and for the Southern District of Illinois, do hereby certify the foregoing to be a true and complete transcript of the Proceedings had of record and on file in the cause of the Toledo, Peoria & Western Railroad vs. The Brotherhood of Railroad Trainmen, et al., Civil Action, No. P-149, (made in accordance with the Request for Portions of Record for Preliminary Hearing in Circuit Court of Appeals, under Rule 75(j) of the Rules of Civil Procedure), as fully as the same appear from the original files and records thereof now in my office remaining.

In Testimony Whereof, I have hereunto subscribed my

name and affixed the seal of the aforesaid Court at Peoria, this 5th day of March, A. D. 1942.

(Seal) *G. W. Schwaner,*  
*Clerk, U. S. District Court.*

1486 United States of America, }  
Southern District of Illinois, } ss:  
Northern Division.

I, G. W. Schwaner, Clerk of the United States District Court in and for the Southern District of Illinois, do hereby certify the foregoing to be a true and complete transcript of the proceedings had of record and on file in the matter entitled Toledo, Peoria & Western Railroad *vs.* The Brotherhood of Railroad Trainmen Enterprise Lodge No. 27, et al., Civil Action, No. P-149, (made in accordance with the Designations of Contents of Record on Appeal filed therein) as fully as the same appear from the original files and recbrds thereof now in my office remaining.

In Testimony Whereof I have hereunto subscribed my name and affixed the seal of the aforesaid court at Peoria, this 14 day of May, A. D. 1942.

(Seal) *G. W. Schwaner,*  
*Clerk.*

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of Volume II of the printed record, which together with Volume I constitutes the printed record, filed in this Court on the third day of July, 1942, in the following entitled cause:

Cause No. 7951.

Toledo, Peoria & Western Railroad,

*Plaintiff-Appellee.*

*vs.*

The Brotherhood of Railroad Trainmen, Enterprise Lodge  
No. 27, *et al.*,

*Defendants-Appellants.*

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 1st day of February, A. D. 1943.

Kenneth J. Carrick,

*Clerk of the United States Circuit Court  
of Appeals for the Seventh Circuit.*

(Seal)

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the seventh day of October in the year of our Lord one thousand nine hundred and forty-one, and of our Independence the one hundred and sixty-sixth.

---

Toledo, Peoria & Western Railroad,  
7951                      *Plaintiff-Appellee,*  
vs.  
The Brotherhood of Railroad  
Trainmen, Enterprise Lodge No.  
27, et al.,  
                    *Defendants-Appellants.*

} Appeal from the District  
Court of the United  
States for the Southern  
District of Illinois,  
Northern Division.

---

And, to-wit: On the sixteenth day of December, 1942, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

No. 7951.

October Term and Session, 1942.

**TOLEDO, PEORIA & WESTERN  
RAILROAD,***Plaintiff-Appellee,*

vs.

**THE BROTHERHOOD OF RAILROAD  
TRAINMEN, ENTERPRISE LODGE  
NO. 27, et al.,***Defendants-Appellants.*Appeal from the District  
Court of the United  
States for the Southern  
District of Illinois,  
Northern Division.

December 16, 1942.

Before SPARKS, MINTON, *Circuit Judges*, and LINDLEY,  
*District Judge*.

LINDLEY, *District Judge*. Defendants appeal from an order enjoining them from interfering with plaintiff "by violence or threats of violence" in the transportation of interstate freight and in handling goods essential to the prosecution of the war; assaulting or attempting to injure by violence any employee of plaintiff; interrupting or obstructing by force and violence movement of interstate shipments over plaintiff's lines and committing various acts of violence condemned as destructive of or injurious to the persons of employees and officers of plaintiff and to plaintiff's property.

Plaintiff is an interstate carrier operating a railroad between Effner, Indiana and Keokuk, Iowa, through Illinois. Much of its freight is carried interstate, and a substantial portion constitutes goods to be used in the war effort.

In October, 1940, employees of plaintiff selected defendant unions to represent them under the provisions of the

Railway Labor Act. 45 U. S. C. A. Sec. 152 (4). Following this plaintiff and the labor organizations submitted counterproposals for settlement of working conditions and rates of pay and negotiations were carried on, with the aid of the National Mediation Board, over a considerable period of time. After the parties failed to agree, plaintiff's request that the Brotherhoods suggest rates of pay under which they would accept plaintiff's proposed rules and working conditions was refused. On November 7, 1941, at a joint conference the Mediator handed the parties arbitration proposals which each declined. The services of the Mediation Board were then terminated in accord with the act, November 21, 1941. Plaintiff then suggested that an impartial committee be appointed to examine the dispute and that an emergency board be appointed by the president. Nothing was done about either suggestion.

Defendants called a strike for December 9, 1941, but it was indefinitely postponed at the request of the Mediation Board. Conferences were again had between the parties, terminating on December 21, 1941, when plaintiff gave notice that its proposed rates of pay, rules and working conditions were to be effective at midnight, December 29, 1941. On December 17 and 28 plaintiff received telegrams from the Mediation Board urging arbitration, but plaintiff refused. A strike was called at midnight, December 29, 1941.

Although the evidence is somewhat conflicting, it discloses continued violence on the part of the strikers. Plaintiff's workers were assaulted, moving trains stoned, trains derailed, windows and lights on the locomotives and cabooses broken, trains stopped, and many threats made against plaintiff's employees. On one occasion a bottle of inflammable liquid was thrown into the engine cab of a moving train, causing a fire and injuring the occupants.

On January 3, 1942, plaintiff filed complaint against defendants seeking to enjoin their acts, and the District Court issued a temporary restraining order. Within five days plaintiff began to present its evidence in support of its application for the temporary injunction. Due to the number of witnesses and voluminous testimony, the court extended the temporary restraining order on January 8, 1942 and again on January 16. After completion of the evidence, on January 19, 1942, the court issued a temporary injunction.



Defendants seek reversal on five grounds: (1) The court was without authority to extend the temporary restraining order beyond five days; (2) No federal question being involved, the District Court was without jurisdiction; (3) The evidence was insufficient to show that the public officers were unwilling or unable to furnish adequate protection for plaintiff's property; (4) Plaintiff failed to make every reasonable effort to settle the dispute as required under the Railway Labor Act and the Norris-LaGuardia Act; (5) The evidence was insufficient to show that defendants had participated in or ratified any act of violence against or interference with plaintiff.

Section 107 of the Norris-LaGuardia Act (29 U. S. C. A.) is in part:

"A complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days."

Defendant contends that, since under this language a restraining order may be effective for five days only, the two extensions were beyond the court's jurisdiction.

The obvious purpose of the five-day limit was to prevent restraint without a hearing on the question whether substantial and irreparable injury has been done to the employer, for so long a time as to affect materially the effort of the striking employees. But to hold that the provision denies the power of the court to continue the restraining order more than five days regardless of whether the hearing on application for temporary injunction is completed, would completely destroy the purpose of the legislation. There is ordinarily no reason why such hearing can not be begun within five days, but not infrequently it can not be completed within that time. Here, it required approximately two weeks. Obviously if the order had been dissolved within five days, there would have been a period of over a week during which defendants' acts, if unrestrained, might well have caused further irreparable damage. The purpose was to prevent possibility of irreparable damage

and to preserve the existing status until an early hearing would determine whether or not a temporary injunction should be issued.

Furthermore if the order for a temporary injunction granted by the District Court was proper, any error in extending the restraining order is not before this court, for that order merged in the injunction. *City of Revo v. Sierra Pacific Power Co.*, 44 Fed. (2d) 281, 283 (C. C. A. 9). The question involved here is the propriety of the injunction. If it was proper, the restraining order was proper. If it was improper, plaintiff's case fails and the propriety of the restraining order is of no importance.

Defendants question the jurisdiction of the District Court. Under the Judicial Code, the District Court has original jurisdiction in controversies exceeding \$3,000 which arise under the Constitution or laws of the United States, 28 U. S. C. A. 41-1, and of all suits and proceedings arising under any law regulating commerce, 28 U. S. C. A. 41-8. Since no diversity of citizenship is involved, the question depends upon whether the proceedings arise under the Constitution and laws of the United States, or, more narrowly, constitute a suit under any law regulating commerce. Plaintiff is a common carrier of freight by railroad in interstate commerce. It insists that it is subject to and entitled to protection under the Interstate Commerce Act, 49 U. S. C. A.; the Railway Labor Act, 45 U. S. C. A., secs. 151-160 and the War Utilities Act, 50 U. S. C. A., secs. 101-105.

The mere fact that Congress has paramount power to legislate in certain fields is not alone sufficient to confer jurisdiction. Thus the fact that a patent is involved will not result in federal jurisdiction if the real issue concerns merely title to the patent, for that is not a matter arising under a federal law. *Laning v. National Ribbon & Carbon Co.*, 125 Fed. (2d) 564 (C. C. A. 7). Similarly, if one of the parties is engaged in interstate commerce and subject to regulation under a federal statute, the court has no jurisdiction of matters concerned solely with a contract between the adverse parties. *Louisville & N. Ry. v. Mottley*, 211 U. S. 149; *State Auto Ins. Assn. v. Parry*, 123 Fed. (2d) 243 (C. C. A. 8). To give rise to federal jurisdiction, the basis of the suit must be concerned with the validity, construction enforcement or effect of the statute; anything less is insufficient. *Shulthis v. McDougall*, 225 U. S. 561;

*Sharp v. Barnhart*, 117 Fed. (2d) 604 (C. C. A. 7); *Stenger v. Stenger Broadcasting Corp.*, 28 Fed. Supp. 407 (D. C. Pa.); *Partridge Lumber Co. v. Michigan Central Ry.*, 26 Fed. (2d) 615 (C. C. A. 8); *Peyton v. Railway Express*, 124 Fed. (2d) 430 (C. C. A. 5); *Postal Telegraph v. Nolan*, 240 Fed. 754 (D. C. Mont.).

We well know that the mere fact that Interstate Commerce is involved and may be affected, is not sufficient to justify jurisdiction of a private suit seeking protection of such commerce. *Sharp v. Barnhart*, 117 Fed. (2d) 604 (C. C. A. 7); *Postal Telegraph v. Nolan*, 240 Fed. 754 (D. C. Mont.). But if the suit directly concerns an Act of Congress a carrier may seek relief in a federal court. Thus, *In re Lennon*, 166 U. S. 548 arose out of a labor dispute in which defendant railroads and employees refused to interchange traffic with plaintiff so long as the latter employed nonunion labor. The Commerce Act provides that carriers must provide reasonable facilities for such interchange. The court held that the acts of defendants directly affected a right and duty of plaintiff arising from the Commerce Act and that the Circuit Court had jurisdiction, since it was the duty of all railroads to furnish reasonable facilities for the interchange of interstate traffic. *Toledo, A. A. & N. M. Ry. v. Pennsylvania Co.*, 54 Fed. 730 (C. C. Ohio). See also *Wabash Ry. v. Hannahan*, 121 Fed. 563 (C. C. Mo.); *Knudsen v. Benn*, 123 Fed. 636 (C. C. Minn.); *Stephens v. Ohio State Telephone Co.*, 240 Fed. 759 (D. C. Ohio).

The Interstate Commerce Act includes no specific provision as to restraint of violent strikes against a carrier engaged in interstate commerce at the suit of the carrier. We are not concerned with the right of the United States to enjoin those who interfere with or obstruct interstate commerce, as in *In re Debbs*, 158 U. S. 564, but with whether a private party may seek federal court aid to the same end. Our question then is whether plaintiff has rights and obligations under Federal Acts, the enjoyment and discharge of which defendants are preventing. If so a statute of the United States is directly involved and the District Court had jurisdiction.

It is, under Section 1 (4) of the Interstate Commerce Act, the duty "of every common carrier subject to the provisions of this chapter engaged in the transportation of passengers or property to provide and furnish such trans-

portation \* \* \* to establish through routes \* \* \* and to provide reasonable facilities for operating through routes and to make reasonable rules and regulations with respect to the operation of through routes \* \* \*"; under section 1 (6), "to establish \* \* \* facilities for transportation, the carrying of personal, sample and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing and delivering of property subject to the provisions of this chapter, which may be necessary or proper to secure the safe and prompt receipt, handling, transporting, and delivering of property subject to the provisions of this chapter \* \* \*"; under section 1 (4) "to provide and furnish transportation upon reasonable request therefor; to establish reasonable through routes with other such carriers, and \* \* \* to provide reasonable facilities for operating such routes"; under section 1 (11) "to furnish safe and adequate car service \* \* \*"; under section 1 (18) " \* \* \* no carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad or the operation thereof, unless and until there shall have first been obtained from the commission, a certificate that the present or future public convenience and necessity permit such abandonment." And section 1 (20) provides: "Any \* \* \* abandonment contrary to the provision of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the commission, any commission or regulatory body of the state or states affected, or any party in interest \* \* \*."

Title 18 U. S. C. sec. 412 (a) is as follows: "Whoever shall willfully derail, disable, or wreck any train, engine, motor unit, or car used, operated, or employed in interstate or foreign commerce by any railroad, or whoever shall willfully set fire to, or place any explosive substance on or near, or undermine any tunnel, bridge, viaduct, trestle, track, signal, station, depot, warehouse, terminal, or any other way, structure, property or appurtenance used in the operation of any such railroad in interstate or foreign commerce, or otherwise make any such tunnel, bridge, viaduct, trestle, track, signal, station, depot, warehouse, terminal, or any other way, structure, property, or appurtenance unworkable or unusable or hazardous to work or use, with the intent to derail, disable, or wreck a train,

engine, motor unit, or car used, operated, or employed in interstate or foreign commerce or whoever shall willfully attempt to do any of the aforesaid acts or things, shall be deemed guilty of a crime."

From these provisions and others it is clear that a carrier in interstate commerce is bound, not only to furnish carrying facilities for anyone desiring them, but to supply "necessary, proper, adequate and safe" facilities. During the course of violence such as occurred here the carrier is rendered unable to furnish such facilities. Thus, plaintiff's property was injured, goods carried endangered, a locomotive set on fire and plaintiff's trains delayed and even prevented from operating.

Congress has seen fit to impose certain duties upon a common carrier engaged in interstate commerce, and the failure to perform such duties subjects the carrier to liability. It can not be that Congress imposed duties, and yet intended that the carrier should be denied federal relief from interference with carrying out such duties. Congress having set up certain requirements which the carrier must meet, when others seek by violence to prevent it from meeting those statutory obligations, it should be permitted to seek protection in a court of equity of the sovereignty imposing the obligation. *Wabash R. R. v. Hannahan*, 121 Fed. 563, 573 (C. C. Mo.).

In the instant case, the acts complained of were so violent that plaintiff was forced to abandon temporarily its train service. Yet Section 1 (18) and Section 1 (20) specifically prohibit abandonment of operations. Since Congress has prohibited such cessation of activity in commerce, the actions of defendants in halting operations, immediately impaired plaintiff in its ability to comply with the federal act and to abide by the statutory prohibitions. Furthermore Congress has forbidden interference with commerce and made violent interference criminal. 18 U. S. C. A. Sec. 409.

In suits arising under the constitutional laws of the United States concerning the words "Arising under the Constitution or laws of the United States, or treaties made, or which shall be made under their authority," the statement has been made that the proceedings of the Constitutional Convention manifest "a settled purpose to include within the federal judicial jurisdiction all questions which involve the national peace and harmony and that the word

'questions' includes every issue capable of a judicial determination." *King v. McLean Asylum of Massachusetts General Hospital*, 64 Fed. 331. A claim of the protection of a federal law, requiring its construction, or of a right or privilege given by a federal law makes a federal question. *Richards v. Town of Rock Rapids*, 31 Fed. 505; *Iowa Loan & Trust Co. v. Fairweather*, 252 Fed. 605.

In cases where a federal statute imposes upon a private party, duties and obligations to be performed, the courts quite generally have approved jurisdiction in the District Court of suits brought by such parties to prevent interference with the performance of their obligations under the federal statutes and under the commerce law. They have held that if interstate traffic is hindered, delayed and burdened to such extent as to amount to unlawful interference with such commerce, a cause of action exists calling for equitable relief. *Southern Pac. Co. v. Peterson*, 43 Fed. (2d) 198 (D. C.); *Kentucky & I. Bridge Co. v. Louisville & N. R. Co.*, 37 Fed. 567 (D. C.); *Ex parte Lemon*, 166 U. S. 548; *Oregon R. & Navigation Co. v. Campbell*, 173 Fed. 957 (D. C.); *Glenwood Light etc. Co. v. Mutual Light etc. Co.*, 239 U. S. 121, 60 L. Ed. 174, 36 Sup. Ct. 32; *Stephens v. Ohio State Telephone Co.*, 240 Fed. 759 (D. C.); *Carmichael v. Anderson*, 14 Fed. (2d) 166 (D. C.).

Thus in *Stephens v. Ohio State Telephone Co.*, 240 Fed. 759, 768 (D. C.), the court said: "The several sections of the act \* \* \* require telephone companies to afford all reasonable facilities for the transaction of business for which they are chartered and which they engage to carry on through their contracts, and subject them, as in case of other instrumentalities of interstate traffic, to heavy penalties for failure to comply with these obligations. As we read the statutes, the same law and procedure are applicable to them which safeguard public and private interests in the operation of any other business engaging in interstate commerce, and we find the jurisdiction of the federal courts over analogous controversies upheld by a long line of decisions touching so great variety of phases of dereliction that we may safely say we have here one belonging to the same category."

We conclude that the court had jurisdiction of the subject matter.

Defendants insist that the evidence was insufficient to



show that public officers were unable or unwilling to furnish adequate protection for plaintiff's property.

Section 107 of the Norris LaGuardia Act (29 U. S. C.) provides that: "No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute \* \* \* except after findings of fact by the court to the effect \* \* \* (e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection."

The evidence disclosed that plaintiff's workers were assaulted and injured, trains stopped and damaged, and that repeated acts of violence occurred. The sheriff of Peoria County testified that he could not protect plaintiff's line properly because of his inadequate force, and he and his deputies did nothing to prevent violence. The sheriff of Tazewell County had only four men to patrol the whole county and was doubtful as to the help he could give. When violence broke out in East Peoria, the Chief of Police was called upon for aid and, although the police station was only about five minutes distant from the scene of events, no help arrived until forty-five minutes after the damage had been effected. The president of plaintiff sent telegrams to the sheriffs of every county in which plaintiff operates, advising them that plaintiff's trains were being interfered with by acts of violence and requesting protection of its trains within each county. Some sheriffs failed to reply, others answered that they did not have the funds or means to give such protection, and only one sheriff replied that he would give such protection "as he could." Plaintiff's railroad extended across the entire width of Illinois, and a part of Iowa and Indiana, and the violence and threats of violence from striking employees were spread over the entire distance. Obviously a great number of police officers and extended cooperation by the public authorities were essential to adequate protection.

The District Court found that the public officers under duty to protect plaintiff were either unable or unwilling to furnish adequate protection. Although some conflict appears, the evidence is sufficient to show inability or unwillingness of the public officers to protect plaintiff. The trial judge had opportunity to hear all the evidence to observe the witnesses and to weight their testimony.

In this situation we can not reverse the court's finding of fact in view of the fact that it was not against the manifest weight of the evidence. *Cater Construction Co. v. Nischwitz*, 111 Fed. (2d) 971 (C. C. A. 7).

Defendants also contend that plaintiff failed to comply with its statutory duty when it refused to arbitrate, required by the Railway Labor Act, 45 U. S. C. A., section 157, and the Norris-LaGuardia Act, 29 U. S. C. A. section 108.

The Railway Labor Act provides that: "Whenever a controversy shall arise between a carrier \* \* \* and its \* \* \* employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation \* \* \* such controversy may, by agreement of the parties to such controversy, be submitted to arbitration. \* \* \* Provided, however, that the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this chapter or otherwise."

The Norris-LaGuardia Act provides: "No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

Plaintiff conceded that it refused to arbitrate. An examination of the record indicates, however, that it made an effort by mediation to reach a satisfactory arrangement with defendants, and that, after nearly a year of negotiations, the Mediation Board terminated the proceedings after arbitration proposals submitted by it were refused by both parties. Plaintiff further sought to reach a satisfactory agreement with defendants by suggesting that an emergency board be appointed by the President, as well as that an impartial committee be appointed to examine the dispute. It is thus apparent that there was no lack of good faith by plaintiff to bar its right to an injunction because of refusal to arbitrate. There is no compulsion on plaintiff to settle the differences between the parties or to enter into any agreement but merely to make

a reasonable effort to compose differences: *Virginian Ry. v. Federation*, 300 U. S. 515, 548.

The Railway Labor Act expressly provides that arbitration is not a condition precedent to securing an injunction. The Act states that on failure of other means, the parties "may" arbitrate, "provided, however," that refusal "shall not be construed as a violation of any legal obligation." Accepting the obvious intent of this section, it is clear that arbitration is not mandatory but voluntary, and that failure to arbitrate is not sufficient to bar legal action. *Texas & N. C. Ry. v. Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548, 564.

It is likewise clear that under the Norris-LaGuardia Act, plaintiff was not required to arbitrate. The Act specifically says that arbitration is voluntary, not compulsory, and further that the employer must make every reasonable effort to settle a dispute either by negotiation or mediation, or voluntary arbitration before he may obtain injunctive relief. The employer is not compelled to avail himself of all three methods; any one of them will fulfill the requirements. Thus in *Mayo v. Dean*, 82 Fed. (2d) 554, 556 (C. C. A. 5) it was held that the employer is not obliged to propose both mediation and arbitration. Furthermore we have held that where violence and threats of violence are committed, Section 108 has no application. *Cater Construction Co. v. Nischwitz*, 111 Fed. (2d) 971 (C. C. A. 7); *United Electric Coal Co. v. Rice*, 80 Fed. (2d) 1 (C. C. A. 7); *Newton v. Laclede Steel Co.*, 80 Fed. (2d) 636 (C. C. A. 7).

Defendants further contend, however, that plaintiff gave only eight days' notice of the change affecting rates of pay, rules and working conditions, contrary to the obligation imposed by the Railway Labor Act, 45 U. S. C. A., sec. 156. Section 156 provides that carriers shall give at least 30 days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, but that, when the services of the Mediation Board are involved, the rates of pay, rules, and working conditions shall be frozen until the Board has acted upon them according to Section 155. Under Section 155, it is provided that if arbitration at the request of the board shall be refused, the Board shall notify both parties that mediatory efforts have failed, and that there shall be no change in rates of pay, rules, or working conditions for 30 days.

From these two sections, it is clear that section 155 is applicable, since the differences had been submitted to the Mediation Board, arbitration had been refused, and the parties had been notified that mediatory efforts had failed. Thus, if 30 days had elapsed from the time the Mediation Board gave its notice to the parties, plaintiff was within the act.

On December 17, 1940, and January 7, 1941, plaintiff delivered its proposed schedules of rules, working conditions and rates of pay. The services of the Mediation Board were invoked on January 15, 1941, and attempts to reach an agreement between the parties continued by the Board until November 21, 1941, when both parties refused to arbitrate and the Board terminated its mediation efforts. Prior to this, plaintiff had submitted its revised and amended proposals of rates of pay, rules and working conditions on November 3, 1941. On December 21, 1941 plaintiff notified defendants that its revised schedules would go into effect on December 29, 1941, and at 12:01 a. m. December 29, 1941 defendants struck. Defendants knew of plaintiff's revised schedule November 3, 1941, and the Mediation Board gave written notification of its withdrawal from the mediation proceedings on November 21, 1941. Both events occurred more than 30 days prior to the date when plaintiff's orders were put into effect. Since section 155 was the guiding section when the controversy was submitted to the Mediation Board, and more than 30 days had elapsed after the Board's withdrawal before any change in plaintiff's rates of pay, rules and working conditions, plaintiff complied with the Act.

Defendants finally contend that the evidence was insufficient to justify an injunction against all defendants, and that under Section 106 of the Norris-LaGuardia Act no labor organization interested in a labor dispute can be held responsible except upon clear proof of actual participation. The evidence was that officers of the union as well as many of the members had engaged in actual violence and that at at least one meeting plans for the strike had been discussed. The evidence was sufficient to justify the court in finding that the unions, as well as the individuals, were intimately concerned in the violence engaged.

The judgment is

**AFFIRMED.**

MINTON, *Circuit Judge*, Dissenting. I am unable to agree with the majority opinion. In the first place, I do not think the District Court had any jurisdiction. This is not a case where diversity of citizenship forms the basis of jurisdiction. Here jurisdiction depends upon whether or not the controversy arises under the Constitution or laws of the United States. It is not a question of whether Congress could have taken cognizance of this kind of controversy; it is a question of whether or not it has taken such cognizance.

To give jurisdiction, the controversy must arise under the Constitution or laws of the United States. What is the controversy here? It is the right of the plaintiff to conduct its business of interstate carrier free from interference and violence at the hands of its striking employees. That right does not stem from the Constitution or any law of Congress. It does not even arise out of the interstate character of the business. The same identical right to be free from interference and violence in the conduct of its business runs to those engaged in intrastate business. The right violated is a common law right given by the State of Illinois and the other States through which the plaintiff's road runs. The right could have been enforced in any one or all of the States through which the plaintiff's road ran. The fact that the plaintiff was engaged in interstate commerce and some Federal statutes imposed some duties pertaining thereto, or that the plaintiff was carrying defense materials, is of no consequence on the question of jurisdiction. Such matters are only incidental. If the plaintiff can invoke the jurisdiction of the United States courts because its striking employees are interfering with its business as an interstate carrier, then every one who is engaged in interstate commerce has the right to claim the jurisdiction of the Federal courts to protect his common law rights. It takes no great imagination to envisage what that would mean to the expansion of Federal jurisdiction in this day and age, when the concept of what constitutes interstate commerce under the Constitution has been so greatly extended.

As I understand the basis of the jurisdiction here claimed, the controversy which it is sought to resolve must stem from the Constitution or some act of Congress. Whenever the Constitution or an act of Congress gives rise to a right of action, a suit brought to enforce that

right may be said to arise under the Constitution or laws of the United States so as to satisfy the jurisdictional requirement, and not otherwise.

This has been the accepted interpretation since the days of Chief Justice Marshall. In *Cohens v. Virginia*, 6 Wheat. 264, 379, 5 L. Ed. 257, 285, he said:

"A case in law or equity consists of the right of the one party, as well as of the other, and may truly be said to arise under the constitution of a law of the United States, whenever its correct decision depends on the construction of either."

A case whose correct decision depends upon the construction of the Constitution or laws of the United States is what gives jurisdiction. The case at bar depends upon no construction of any part of the Constitution or laws of the United States. It seeks only the enforcement of a common law right.

Again in *Oshorn v. United States Bank*, 9 Wheat. 738, 822, 6 L. Ed. 204, 224, Chief Justice Marshall said:

"A cause may depend on several questions of fact and law. Some of these may depend on the construction of a law of the United States; others on principles unconnected with that law. If it be a sufficient foundation for jurisdiction, that the title or right set up by the party, may be defeated by one construction of the constitution or law of the United States, and sustained by the opposite construction, provided the facts necessary to support the action be made out, then all the other questions must be decided as incidental to this, which gives that jurisdiction."

In *Niles-Bement Co. v. Iron Moulders Union*, 254 U. S. 77, 82, 41 S. Ct. 39, 65 L. Ed. 145, a suit to enjoin striking employees from interfering with a corporation's business so as to cause delay in the fulfillment of its contracts with the Government to furnish war supplies and so as to impede its interstate business, the Supreme Court, speaking by Mr. Justice Clarke, said:

"The allegations of the bill that the contracts which the petitioner had with the United States Government were of a character which must be given priority under Sec. 120 of the National Defense Act, approved June 3, 1916 (39 Stat. 166, 213), and that they involved interstate commerce, are much too casual and meager



to give serious color to the claim now made that the cause of action asserted is one arising under the laws of the United States."

In *Gully v. First National Bank*, 299 U. S. 109, 112, 114, 57 S. Ct. 96, 81 L. Ed. 70, 72, an action was brought in the State court by the State Collector of Taxes against the defendant bank that had assumed the debts and obligations of another bank. Among the debts assumed were taxes levied upon the shares of stock of the bank. Because the right of the State to assess the stock of a national bank was granted by an act of Congress, a petition of removal was granted to the District Court on the ground that it was a suit arising "under the Constitution or laws of the United States." The Supreme Court held there was no Federal jurisdiction, and remanded the case to the State court. Mr. Justice Cardozo said:

"The right or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another. . . .

"A suit to enforce a right which takes its origin in the laws of the United States is not necessarily, or for that reason alone, one arising under those laws, for a suit does not so arise unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect, of such a law, upon the determination of which the result depends.' *Shulteis v. McDougal*, 225 U. S. 561, 569 . . . 'the federal nature of the right to be established is decisive—not the source of the authority to establish it.' (*Puerto Rico v. Russell & Co.*, 288 U. S. 476, 483.)"

What law of the United States if given one construction will sustain the plaintiff's right, and if given another will deny it? Obviously, the construction of no law of the United States is involved in the right the plaintiff asserts. It is a common law right, not a Federal right, that is asserted. "The federal nature of the right to be established is decisive," the Supreme Court says. There can be no Federal nature in a common law right.

In *McGoon v. Northern Pacific Ry. Co.*, 204 Fed. 998, 1001, 1005, the court lays down the rule thus:

"Whenever federal law grants a right of property or of action, and a suit is brought to enforce that right, such a suit arises under the law creating the right.

within the meaning of statutes defining the jurisdiction of federal courts."

After reviewing numerous cases, the same court says:

"The line of distinction which it seems to me will go far to harmonize the cases is this: when the complaint shows a case which arises out of a contract or a common-law right of property, and only indirectly and remotely depends on federal law, such a case not only does not, but cannot properly, turn upon a construction of such law."

From the rules enunciated so clearly in these cases, it seems apparent to me that no case under the Constitution or laws of the United States is presented, and the court is without jurisdiction and the case should be dismissed.

If, however, I am mistaken on the question of jurisdiction, there is a ground upon which the judgment of the District Court should be reversed and the plaintiff denied the relief sought.

After mediation had failed, the mediator proposed arbitration. The plaintiff refused to arbitrate. The majority opinion neglected to state that the defendants offered to arbitrate. Voluntary arbitration is provided for by statute. (45 U. S. C. A. Sec. 157 *et seq.*) When negotiations between the parties and through the National Railroad Adjustment Board and the National Mediation Board have failed, the statute provides for voluntary arbitration. It is the purpose and the spirit of the Railway Labor Act to use all means of negotiation, mediation and arbitration to the end that controversies between the carriers and their employees may be resolved without conflict or strikes. The plaintiff was willing to pursue all the voluntary procedures set up by the Railway Labor Act which carried no sanction, but it refused to take the step into voluntary arbitration, because the award of the arbitrators was enforceable in a court of law. So the plaintiff refused to arbitrate.

The plaintiff exercised its right to refuse to arbitrate, and it did it without any excuse or justification. The District Court made no finding that it would have been useless or unreasonable for the parties to attempt to arbitrate their differences. The plaintiff stood upon its right to refuse to arbitrate, and this refusal without justifica-

tion or reason, brought into play another provision of law known as Section 8 of the Norris-LaGuardia Act (29 U. S. C. A. Sec. 108), which provides:

"Sec. 108. Noncompliance with obligations involved in labor disputes or failure to settle by negotiation or arbitration as preventing injunctive relief.

"No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration. Mar. 23, 1932, c. 90, sec. 8, 47 Stat. 72."

As we said before, the plaintiff did not have to arbitrate. One does not have to register for a ration card, but if one does not, one gets no sugar. Plaintiff could spurn, as it did without rhyme or reason, the offer to arbitrate, but if it did, it lost the right to come into a court of the United States to obtain relief by injunction.

I am not prepared to agree that this court has held that where violence and threats of violence are committed, Section 108 has no application. *Cater Const. Co. v. Nischwitz*, 111 F. 2d 971, 977, and the cases it relies upon go only to the extent of holding that Section 108 does not apply if it is found or is apparent from the proceedings that negotiation would be useless. That takes the place of a reasonable effort to settle by negotiation, mediation and arbitration. The law does not require a futile thing, and if there is a finding to the effect that efforts to negotiate, mediate or arbitrate would be futile, that would be one thing. No such finding is present in the case at bar.

Neither am I prepared to agree that a reasonable effort to do either one of three things, to wit, negotiate, mediate or arbitrate, will satisfy the provisions of Section 108. *Mayo v. Dean*, 82 F. 2d 554, relied upon by the majority, holds that Section 108 is not applicable to the case before them, but if it were applicable, they would hold its requirements had been met by mediation. Such a limited construction does not meet the situation Congress intended to remedy. The whole purpose of the Railway Labor Act is to induce settlement by voluntary negotiation, mediation and arbitration of all questions in dispute between employer and employee. It is the purpose of the Norris-

LaGuardia Act to deny the aid of a Federal court of equity to one who has not exhausted his remedies for voluntary adjustment. Why should the courts of equity be open to a party who spurns the machinery for the voluntary adjustment of the dispute? There never would have been a strike in the case at bar if the plaintiff had accepted the offer of the employees to arbitrate. Once both parties had entered into arbitration, they were bound by the ultimate award of the arbitrators. (45 U. S. C. A. Section 159.)

One cannot in the absence of statutory authority claim the equitable jurisdiction of a Federal court until all administrative remedies have been exhausted. *Myers v. Bethlehem Corp.*, 303 U. S. 41, 58 S. Ct. 459, 82 L. Ed. 638; *Natural Gas Co. v. Slattery*, 302 U. S. 300, 58 S. Ct. 199, 82 L. Ed. 276.

Since arbitration would have averted a strike, this means should have been exhausted before resort to a court of equity was claimed. The plaintiff's property was in no way molested or in danger until after the strike was called. The strike was called after the plaintiff refused to arbitrate. The plaintiff was in no position to demand the aid of a court of equity.

In this view of the case, the judgment should be reversed.

Endorsed: Filed Dec. 16, 1942. Kenneth J. Carriek, Clerk.

---

And on the same day, to-wit: On the sixteenth day of December, 1942, the following proceedings were had and entered of record, to-wit:

Wednesday, December 16, 1942.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.  
Hon. Sherman Minton, Circuit Judge.  
Hon. Walter C. Lindley, District Judge.

Toledo, Peoria & Western Railroad,  
7951 *Plaintiff-Appellee,*  
vs.  
The Brotherhood of Railroad  
Trainmen, Enterprise Lodge No.  
27, et al.,  
*Defendants-Appellants.*

} Appeal from the District  
Court of the United  
States for the Southern  
District of Illinois,  
Northern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Illinois, Northern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the orders of the said District Court in this cause appealed from be, and the same are hereby, affirmed, with costs.

And afterwards, to-wit: On the fifteenth day of January, 1943, the following further proceedings were had and entered of record, to-wit:

Friday, January 15, 1943.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

Hon. Sherman Minton, Circuit Judge.

Hon. Walter C. Lindley, District Judge.

Toledo, Peoria & Western Railroad,  
*Plaintiff-Appellee,*

7951

*vs.*

The Brotherhood of Railroad  
Trainmen, Enterprise Lodge No.  
27, *et al.*

*Defendants-Appellants.*

} Appeal from the District  
Court of the United  
States for the Southern  
District of Illinois,  
Eastern Division.

It is ordered by the Court that the petition for a rehearing of this cause be, and it is hereby, denied. Judge Minton does not concur.

And afterwards, to-wit: On the twenty-third day of January, 1943, there was filed in the office of the Clerk of this Court, a praecipe for record, which said praecipe for record is in the words and figures following, to-wit:



## APPEAL TO

THE SUPREME COURT OF THE UNITED STATES,

From the United States Circuit Court of Appeals,

For the Seventh Circuit.

Toledo, Peoria & Western Railroad,	} 7951.
<i>Plaintiff-Appellee,</i>	
<i>vs.</i>	
The Brotherhood of Railroad	
Trainmen, Enterprise Lodge No.	
27, <i>et al.,</i>	
<i>Defendants-Appellants.</i>	

To: Kenneth J. Carriek, Clerk of the United States  
Circuit Court of Appeals;

## PRAECIPE FOR RECORD.

The Clerk is hereby requested to prepare a record to be filed with the Clerk of the United States Supreme Court by the defendants-appellants herein, to support a Petition for Writ of Certiorari. It is requested that said record shall contain:

- (1) The complete printed record filed in this Circuit Court of Appeals.
- (2) The majority and dissenting opinion of this Court.
- (3) The order of this Court on Petition for Rehearing.
- (4) The judgment of this Court.

John E. Cassidy,

*Attorneys for Defendants  
Appellants.*

State of Illinois, }  
County of Peoria. } ss.

John E. Cassidy, being duly sworn and under oath, deposes and states that he dispatched a true and complete copy of this Praeceptum for Record to Attorney John M. Elliott, Alliance Life Building, Peoria, by depositing the same in the United States Mail addressed to said attorney.

Affiant further states that said John M. Elliott has been and is one of counsel for plaintiff-appellee herein.

John E. Cassidy.

Subscribed and sworn to before me this 22nd day of January, A. D., 1943.

Cecelia Dwyer,  
*Notary Public.*

(Seal)

Endorsed: Filed Jan. 23, 1943. Kenneth J. Carrick,  
Clerk.

And afterwards, to-wit: On the twenty-sixth day of January, 1943, there was filed in the Office of the Clerk of this Court, a designation of additional portions of record on appeal, which said designation is in the words and figures following, to-wit:

APPEAL TO

THE SUPREME COURT OF THE UNITED STATES,

From the United States Circuit Court of Appeals,

For the Seventh Circuit.

Toledo, Peoria & Western Railroad,	} 7951.
<i>Plaintiff-Appellee.</i>	
<i>vs.</i>	
The Brotherhood of Railroad Trainmen, Enterprise Lodge No. 27, et al.,	
<i>Defendants-Appellants.</i>	

To: Kenneth J. Carrick, Clerk of the United States  
Circuit Court of Appeals:

DESIGNATION OF ADDITIONAL PORTIONS OF  
RECORD ON APPEAL.

Now comes Toledo, Peoria & Western Railroad, plaintiff-appellee herein, and designates the following additional portions of the contents on record on appeal:

(1) Original plaintiff's exhibits 1 to 31, both inclusive, in lieu of copies thereof, to be forwarded to the Clerk of

the Supreme Court of the United States by the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, said exhibits being specified in petition for order directing the Clerk of the District Court to send plaintiff's original exhibits to the Clerk of the Circuit Court of Appeals filed April 27, 1942 and shown on page 1012 of the printed record herein, which said exhibits are now on file with the Clerk of the Circuit Court of Appeals for the Seventh Circuit pursuant to order on said petition entered April 27, 1942 and shown on page 1013 of the printed record in this cause.

John M. Elliott,  
Clarence W. Heyl,  
*Attorneys for Plaintiff-Appellee.*

John M. Elliott,  
1401 Alliance Life Building,  
Peoria, Illinois,  
and  
Clarence W. Heyl,  
Central National Bank Building,  
Peoria, Illinois,  
*Attorneys for Plaintiff-Appellee.*

State of Illinois, {  
County of Peoria. } ss.

John M. Elliott, being first duly sworn upon oath, deposes and states that he dispatched a true and correct copy of the above and foregoing designation of additional portions of record on appeal in this cause to John E. Cassidy, Jefferson Building, Peoria, by depositing the same in the United States Mail addressed to said attorney on the 25th day of January, A. D. 1943.

Affiant further says that the said John E. Cassidy has been and is one of counsel for defendants-appellants herein.

John M. Elliott.

Subscribed and sworn to before me this 25th day of January, A. D. 1943.

(Seal) Esther M. Schulthes,  
*Notary Public.*

Endorsed: Filed Jan. 26, 1943. Kenneth J. Carriek,  
Clerk.

---

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the proceedings had and papers filed made in accordance with the praecipe for record filed January 23, 1943 and designation of additional record filed on January 26, 1943, in the following entitled cause:

Cause No. 7951.

Toledo, Peoria & Western Railroad,  
*Plaintiff-Appellee,*  
*vs.*

The Brotherhood of Railroad Trainmen, Enterprise Lodge  
No. 27, *et al.,*  
*Defendants-Appellants,*

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 1st day of February, A. D. 1943.

(Seal) Kenneth J. Carrick,  
*Clerk of the United States Circuit Court  
of Appeals for the Seventh Circuit.*

## SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 19, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(7074)